manager of the bill, I didn't have a chance to speak to the Republican manager, but we would like to have all voting completed tonight or early—sometime before noon—tomorrow. If that is the case, we have a number of other issues that are extremely important that we want to try to get a handle on before we leave. We need to take a look at the intelligence authorization bill. That is a conference report which has been completed. We also have to do the Defense authorization conference report. We need to complete that.

We have to take a hard look at FISA. It would be in the best interests of the Senate and this country if we could determine what the will of the Senate is on the domestic surveillance program. It expires on February 5. I hope prior to our coming back here in January that we have the Senate's position on that and we send it to the House before we leave here.

Then, finally, it is kind of a moving target, but the spending bill we are going to get from the House—I have spoken to the Republican leader today. We are going to figure a way to go forward on that when we get it from the House. It appears at this time we will get it sometime Tuesday—maybe Monday but probably Tuesday.

Then—there are no secrets here; I wish we could have a few more—we have to do the domestic spending, get that done. Also, as much as it pains me to say this, we have to do something about the supplemental appropriation for the President for the war in Iraq.

Those are the main issues we have. With the little bit of time we have, there are a number of holds we are trying to work our way through. I had a good conversation with Senator COBURN yesterday and he has indicated a willingness to let us move some of those. I hope that in fact is the case. As much as I disagree with Senator COBURN on so many things, I have found him to be an absolute gentleman and someone who is a man of his word. He has different beliefs than I do. He is entitled to those. He does it because it is a matter of principle. That is obvious. From all I know about him, it is not because of political purposes but because it is something he believes in. I came to learn a long time ago that other people's beliefs are as important as mine.

That is the track forward.

FARM, NUTRITION, AND BIOENERGY ACT OF 2007—Continued

Mr. REID. I ask unanimous consent we now move back to the farm bill.

The PRESIDING OFFICER. The farm bill is now pending.

The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, let me join the leader indicating there is no reason we should not and we will pass the Energy bill today. Now that it is clear it is not going to be a bill to raise taxes and drive up the price of fuel at the pump, I think there is broad bipartisan support for this bill. This is the way the Senate ought to function, coming together behind those things that are achievable.

The bill, with the changes the majority leader has indicated we are going to make, could be signed by the President and it will be something we could all be proud of.

We also intend to finish the farm bill as rapidly as possible, so I share his goals for today, and tomorrow if need be. I think we should move forward with the farm bill and finish it.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, before the Senator from Nevada leaves, I wish to note first I was very pleased to accept your definition of our relationship—good friends. We are friends. I thank you for that and I want to say that now.

I do want to say to you about the bill we have had a long fight about, and we just finished about as difficult a vote as we have had in a long time, that the bill you are going to send back to the House, this bill up here, with a few alterations and the taxes out, this bill, I guarantee, will get signed and it will become law. It will be the most significant act we can take to reduce our dependence on foreign oil, all by itself. It will get passed, now that we are finished with the hurdles, and you will be the one who will be leading it through the remainder of its journeys and you will be there when, indeed, it becomes the law of the land. It will be the most significant energy act we can do.

It was done by the Committee on Commerce, led by Senator INOUYE and Senator STEVENS. Because they know how to work, they passed it when we could not pass it for years. Now it is ready to go. It is not dead. The vote caused it to stay alive and go down its way to the President for his signature.

I think the Senator's accomplishments in this regard are to be commended. We are going to get a great bill and you will be part of it. I am sorry it is not exactly what you want, and you can rest assured there will be some of us helping you and helping the other side when it comes to the incentives you spoke of in your remarks. Some of us think they are important. We just don't think they belong on this bill and they do not deserve a veto.

I thank the Senator for his kindness as we work this through. I hope we can make a couple of changes that Senator INOUYE thinks are important before the bill is sent to the House.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, my heart is heavy, and I say that seriously, recognizing next year at this time Senator DOMENICI will be in the last few days of his 36-year service in the Congress of the United States. During 25 years of that, I have worked with him. My next year will be 26 years. As partisan as he is and as partisan as I am, we have worked toward meeting the demands of the State of Nevada, heavily involved in the defense of this country for decades, as is the State of New Mexico. In the process of our working together, we have helped the country. The safety and reliability of our nuclear stockpile as it exists today is a result—and I say this in no way to boast but to be factual—of what Senator INOUYE and Senator DOMENICI and I put into effect as members of the Energy and Water Subcommittee on Appropriations. We do not need to dwell on this longer than to say his dedicated service to the country is something I recognize, the people of New Mexico and of our country will recognize for many years to come.

Mr. DOMENICI. I thank the Senator.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, this last vote was a historic vote for America. This was a decision about whether we were going to look to the future to change to an energy policy and a environmental policy consistent with America's best interests. Pitted in that vote were the oil companies, the energy companies of years gone by, and those energy sources for our future. The energy companies of years gone by prevailed.

The irony is that the Republicans, Senator MCCONNELL and others, have stood steadfast in protecting the subsidies for the oil companies of America. That is a time-honored tradition in the Senate. Whether you agree with it or not, the Senate, by and large, has been very kind to the oil companies and the oil industry throughout our history. We couldn't have seen a vote they would have been happier with than the last one, because in the last one, the last vote, we suggested that subsidies for oil companies should give way to tax incentives for new sources of energy, sources of energy that are clean, renewable, sustainable, and that vote failed by one vote.

Isn't it ironic, at a time when oil companies in America have enjoyed the highest profit margins in their history, that the Republican argument is we must continue the tax subsidies for those oil companies? Isn't it ironic, at a time when Americans are paying higher and higher prices at the pump for gasoline, while oil companies have the highest profits in their histories, the Republicans argue we should not penalize these oil companies in any way or they will take it out on the consumers? It is a craven political position. It is a position which is devoid of leadership. It is a position which looks to the past instead of to the future.

The future suggests these oil companies should be held accountable like

every company. With $90-a-barrel oil, why in the world would they need a Federal subsidy? Why in the world would the Members of the Senate protect that subsidy when these oil companies are enjoying the highest profits in the history of their industry?

I think many of us believe there is a future that is much different. It is a future which most Americans are praying for—when we are less dependent on foreign oil, when we are using energy sources that are kind to the environment, and where we are reducing greenhouse gas emissions that cause climate change and global warming. That is the future. The future just failed by one vote. The past was preserved with those who voted against this last motion.

The oil companies now are celebrating in their boardrooms. Not only do they have the highest profits in history, they continue to have a death grip on this Senate. They continue to be able to muster enough votes to stop us from moving forward with the energy for America's future. It may be a great political victory today for the oil companies, but I will tell you the day is coming, and soon, when the American people will have a voice. In the election in 2008, they can decide whether to elect those political figures who are preserving the past, ignoring the future, or vote for those who want real change.

I think this was a historic vote. To lose by one vote in terms of moving us forward, to say that President Bush—who has his own history in the oil industry—is going to dictate America's energy future, is to condemn us, I am afraid, to a future that is not hopeful. It is a future where this administration, having rejected Kyoto, still stands in lockstep with the oil industry and their view of the world. That has to change. That has to change if our future generations and our children are going to have a liveable world, one where they can cope with the changes in the environment and say that our generation did not let them down. The Senate let them down with this last vote.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, aren't prices of gasoline high enough? Why would we want to raise the price of gasoline for the American consumer by raising taxes and the costs of doing business on the people who produce oil and gasoline for the American consumer? That is exactly the argument I think we heard from the distinguished assistant majority leader: Taxes are not high enough on domestic producers of oil and gasoline.

I think this vote we had was a very important vote because what we said is we think prices are too high and should not be any higher. We do not believe we ought to depend more and more on imported sources of oil and gas. We believe we ought to produce more domestically, here in the United States.

The kind of arguments we hear from the other side of the aisle so often demonstrate a kind of schizophrenia when it comes to a national energy policy, further burdening those who produce oil and gasoline here domestically and then at the same time railing about the high prices.

Congress can pass laws, Congress can repeal laws, but the one law Congress cannot repeal is the law of supply and demand. One of the ways we are going to find our way to a more reasonably priced gasoline at the pump is if we increase the supply. We know we are in a global competition for oil and gas. That is one of the reasons why the prices continue to go up, because supply is not keeping pace. One of the things we need to do is to take reasonable steps to open areas that are now out of bounds to domestic exploration for these precious natural resources—in an environmentally responsible way, as the modern oil and gas industry is capable of doing. It doesn't do any good to rail against big oil or to try to use any sector of the economy as a political football when it hurts the American consumer and the American people.

I agree with the distinguished Senator from New Mexico that it was important that we defeat this tax increase that would raise the price of gasoline at the pump for the American consumer. Now we can come together and work on another important element of our national energy policy and that is conservation. We need to conserve and to use our natural resources more efficiently. That is what the CAFE provisions of this bill will do. Yes, we need to explore and put money into research and development of renewable fuels to try to find new and more efficient ways to limit our reliance on oil and gasoline.

But in the near term, we know that is going to be part of the puzzle. We need to explore clean nuclear energy as a source of electricity. France produces more than 80 percent of its electricity using nuclear power; for America, it is around 20 percent. We need to get away from the scare tactics and using the energy companies that we are going to have to, in part, rely upon to find our way out of where we are and come up with a comprehensive energy strategy which says, yes, we need to tap into all sources of energy in an environmentally responsible way and a way that will limit carbon production and will help with the issue of climate change at the same time. But we are not going to do it by raising taxes on the domestic oil and gas industry.

I would just point out that the competitors, for most of the people whom the majority wants to add taxes to, are competing with people like Hugo Chavez and Ahmadinejad in Iran, state-owned oil companies that would not be subject to this increase in taxes. So they are literally targeting the domestic producers in a way that will further harm our ability to become less dependent on imported oil and gas.

I am proud of the vote the Senate had today. I hope we will go forward and come up with a commonsense, bipartisan resolution on the CAFE and renewable standards portion of this bill, that we will pass the bill and send it to the President for a quick signature. It would be one of the very few areas where this Congress will have actually done something positive here in the last year, and I think we ought to not give up that opportunity but take advantage of it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, sometimes here in the Senate we have so many competing views and so many different kinds of votes, some of them procedural, that it is hard to tell when something good happens. I wish to talk about such an opportunity that we have right now. This is a little bit like something my late friend Alex Haley used to say: ''Find the good and praise it.''

We are on a path in the Congress now to do something the Senate did a few weeks ago, which was to take a step that our country's largest energy laboratory, the Oak Ridge National Laboratory, has testified before our committees would be the single most important step we could take to reduce our dependance on foreign oil. By reducing our dependance on foreign oil, we would do something that we could actually honestly say would help to lower the $3-a-gallon gasoline price over time, something that we could honestly say would help deal with the urgent issue of climate change, something that we could honestly say would put us on a different path toward clean energy in this country. And those are the new fuel efficiency standards.

There is a clear consensus in this body—I gather in the House of Representatives, too—that for the first time in more than two decades, the Congress should say to everyone who makes cars and trucks in this country: You have to make cleaner cars; these cars have to use less oil one way or the other. We are not really saying to them, or at least I do not think we should say exactly how they achieve that; we are just saying that by the year 2020 the cars and the trucks have to average 35 miles per gallon. This is a big step.

As I said, the Oak Ridge Laboratory testified in the Environment and Public Works Committee, this is the single most important step the Congress can take to reduce our dependance on foreign oil. We have already voted to do it in the Senate, and we have already voted to do it in the House, and we had a vote today to strip away the taxes that the Senator from Texas just talked about. So we are on a path, a clear path to send this bill back to the House and then to the President and, before the first of the year, to take the most important step we can take to reduce our dependance on foreign oil.

There is a lot of talk and genuine concern about climate change. There is not as much commonsense talk about solutions.

On the electricity side, we know what works, and we began, in 2005 with the Energy bill, to take those steps. That bill could have been called—should have been called—a clean energy bill because it started with aggressive steps on conservation and then it went to a renaissance of nuclear power.

The inconvenient truth on solutions to climate change is that conservation and nuclear power are the only way we will be able to deal with climate change in this generation. We hope we will be able to move ahead to sequester the carbon from coal, but we do not have that technology yet in a way that it can be used in a wholesale way. We hope there will be solar thermal powerplants such as the one being built in California, and we hope photovoltaic solar panels will cost less and people can use them on their houses, but those renewable ways to create electricity only produce a very small percentage of what we need. So in this generation, on the electricity side, conservation and nuclear power, which today produces 80 percent of all of our carbon-free electricity, are the real ways to deal with climate change, and in our part of the country, in the Smoky Mountains of Tennessee, the real way to make the air clean.

In the same way, on the fuel side in this country that uses about 25 percent of all of the oil and gas, the single most important thing we can do is what we have already voted for once in this body, the House has voted for once, and if they take this bill and send it on to the President, the Congress will have done it; it will be fuel efficiency standards that say to everyone who makes and sells cars here: Your cars and trucks have to average 35 miles per gallon by the year 2020.

So in the midst of all of the procedural votes and debating these genuinely held differences of opinion, I simply want to put a spotlight on the fact that this Congress is poised to send to the President the most important thing we can do to lower prices, to reduce the dependance on foreign oil, and to deal with the climate change. It is the kind of result, the kind of bipartisan result that most Americans would like to see happen here. They know we have our differences. We will be back and forth on our votes. That is what we are here for. The tough issues come to the Senate. That is why we are a debating society. But in the end, we do not come here just to state our principles; we come here to get principled solutions. We are on our way to one of the most important principled solutions we can have in terms of energy efficiency.

I congratulate the Senators who have been so much involved in this. I hope we will pass the legislation that the Senator has promised, the majority leader has promised to produce here. I hope the House of Representatives will pass it, as well, and send it to the President. I hope that over Christmastime, Americans will look at this Congress and say: Good for you on energy independence, on climate change, on cleaner air, on reducing our dependance on foreign oil. You took the most important step you could take, and that is what we think a Congress ought to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, let me join with the Senator from Tennessee in applauding an action that ultimately now will be taken by the Senate and therefore by the Congress to add substantially to an energy policy in this country that begins us down the road in a long march toward a higher degree of energy independence.

I have been in the Congress 27 years. I have always supported, up until this year, leaving CAFE or fleet standards for efficiency alone.

I got here in 1980. We had just come out of the 1970s oil crisis. We had put policy in place that was helping transform the automobile industry in our country to a more efficient fleet average. But over the course of the last 5 years, I have seen it become increasingly important that we focus on every aspect of energy in our country.

I used to be somewhat selective in what ought to be produced versus what ought not be, where we ought to put our incentives, where we ought to put our tax dollars to improve availability in the marketplace. But it became increasingly obvious to me that just a few miles per gallon per automobile in this country could make all the difference in the world.

We now import $1 billion a day in oil, approximately; $360 billion of America's money goes overseas to foreign nations which are, at best, indifferent to our interests, and at worst, using the term that I call ''petronationalism,'' use the power of their energy not only to squeeze us, but then they take that money and reinvest in our country or invest somewhere else, in many instances not in our interests.

I have always been frustrated that a great nation such as ours could not move toward energy independence, could not set as a goal that by a certain time our country could and would become energy independent in all sectors if we did the following things and if we began to drive public policy in that direction. So this spring, Senator BYRON DORGAN of North Dakota and I did something I had never done before: We introduced legislation for a mandatory 4-percent change in fleet efficiencies on an annual basis. Well, you would have thought the roof caved in.

The automobile industry came to me wringing their hands and saying: We simply cannot do that. You have always been with us.

I said: Yes, that is right. In 27 years, I have not changed, frankly, and in 27 years you have not changed, and it is time we do change a little bit.

Now there are a lot of new efficiencies coming on out there, from hybrids to flex vehicles, and hopefully we are going to see a hydrogen fuel cell car on the market in a very short period of time that will begin to move its way in the market. So the automobile industry deserves a lot of credit for beginning to recognize the need to change what we use to drive America's transportation fleet.

But the opportunity to change the industry, to cause them to move down that road in a discernable and a direct way because it is the public policy of this country, is something I decided to become a part of. I believe it was with the introduction of that bill, with Senator DORGAN and I working together, that we got those kinds of things out of the Commerce Committee and into the Energy bill that passed the Senate. And that was a strong energy bill. It had all of the right blends and mixes in it to begin to create a cleaner energy consumptive world for us and at the same time a more independent and a more efficient world.

Today's vote was critical. We are going to send an energy bill to the President in relatively short order, I hope, that has a lot of those things in it and that causes America's transportation fleet to move in the right direction.

Mr. President, $3 dollars a gallon for gas is coming out of the hip pockets of moms and dads in this country today, and if that pace continues to go up, it is going to do more to change—I think in a negative way—the American economy than anything we have seen. We ought to be all about helping the average American change that equation, and I think efficiencies do that. Conservation is critical as a component of a total energy package because that which you save you do not have to produce. Just a couple of miles to the gallon across America's transportation fleet is millions and millions of barrels of oil. That is what we ought to be about. It will be a cleaner fleet and a fleet that will produce less carbon into the atmosphere.

All of us are concerned about greenhouse gasses and climate change, and efficiencies and new technologies, in my opinion, are the best direction to lead us to accomplish a cleaner world, and today a critical vote occurred that will allow us to do that.

AMENDMENT NO. 3666

The PRESIDING OFFICER. The Senator from Montana.

Mr. TESTER. Mr. President, I rise to speak on amendment No. 3666, which we will have a vote on at some point later in the day.

This amendment to the farm bill addresses manipulation in the livestock industry. We have had consolidation in agribusiness over the last many decades. In the meat packer industry, for example, there are four major meat packers that control 80 percent of the

market in the United States. Being big is not necessarily bad, but it can allow companies to manipulate and control the marketplace. We all know a monopolistic and controlled marketplace doesn't benefit anybody. Without competition, without that free market, we put our cow/calf producers at risk.

The meat-packing companies have the past because of packer ownership manipulated forward contracting and pressure on producers to distort the supply and demand, maximizing their profits often at the expense of the cow/calf producer. The producer ends up being price taker and not price maker due to manipulation of the marketplace and restriction of the free market we all expect in the cattle industry.

Way back in about 1921, this Government had the foresight to realize the free market system was a good one and that it wasn't working quite right, even with the antitrust laws which were deemed inadequate. So they passed an act called the Packers and Stockyards Act. That act has worked pretty well over the many decades since 1921. Unfortunately, court decisions recently misinterpreted the intention of the act.

Back in 2005, a lawsuit was brought forward by a handful of livestock producers. This lawsuit claimed market manipulation by the meat-packing industry, thereby artificially lowering the price the cow/calf producer would get for their cattle. A jury awarded $1.28 billion in damages. Some time later, three judges decided to rewrite the Packers and Stockyards Act instead of interpreting it. They overturned the decision based on a legitimate business reason.

Amendment No. 3666 once again clarifies the Packers and Stockyards Act to its original intent, reintroducing competition into the marketplace, helping maintain a level and competitive playing field between widely dispersed cattle producers throughout the country and highly concentrated meat packers.

I don't think there is a person in this body who doesn't think the free market system is a good one. Currently, what we have in the meat-packing industry is four companies that control 80 percent of the marketplace. The CEOs of these four companies could go out on the golf course and determine how they are going to manipulate the marketplace. We need to make sure as a government we have protection in place for our family ranchers. That is what this amendment will accomplish. It will reinstate the Packers and Stockyards Act to its original form which worked so well for so many years.

We have 170 groups in favor of this amendment. There is going to be some groups that oppose it. The truth is, if we want to have a vibrant cow/calf producer environment and economy, we need to pass the amendment. We need to make sure they have every market advantage they deserve. It is tough enough on the farm and on the ranch to make a living. Right now in Montana, I didn't check the weather this morning, but it is probably a heck of a lot colder than it is here. In some places in Montana, because of drought, they are out feeding cattle right now. They are doing an honest day's work, and they should get an honest day's pay. When you have monopolization in the marketplace, it takes away the ability to get an honest day's pay for an honest day's work. This amendment is going to help the folks in Montana where agriculture is the No. 1 industry and the No. 1 issue. If we are going to keep this industry vibrant, we need to pass this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I yield 15 minutes to the Senator from Kansas, Mr. ROBERTS.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERTS. I thank my distinguished colleague for yielding me time.

I rise to speak in opposition to the amendment offered by my distinguished colleague from Montana. Despite the fact our Nation enjoys but apparently some do not appreciate the fact that production agriculture does provide the best quality food at the lowest price in the history of the world to feed not only America but the world's hungry, we have heard repeated calls for reform—and I know my colleague thinks his amendment falls into that category—of farm programs. While targeted and pertinent reform is certainly needed and this farm bill does take major steps forward in answering those calls, it seems to me we must be cautious of what lurks under the banner of reform. We must be mindful of the unintended consequences of our actions, and nowhere in this bill is that more evident than in the livestock title.

I represent a State where cattle outnumber people more than two-to-one. I have always said, usually they are in a better mood, especially with the weather we have been having. Cattle represented 61 percent of the agricultural cash receipts by generating over $6 billion in 2005; obviously more in 2006. I tell you this so you understand when I say the livestock industry is vital to Kansas and, I know, other States that are represented very ably in the Senate and to our national economy and our livelihoods. The underlying bill expands the scope of the Agricultural Fair Practices Act and the Packers and Stockyards Act. But these expansions will have major implications on the industry, and we must proceed with caution.

In the livestock hearing held in April, witnesses referenced a study which showed alternative marketing arrangements account for only 38 percent of the transactions in the fed cattle market. The cash market is responsible for 62 percent. Only 4.5 percent of transactions went through forward contracts and 5 percent through packer ownership. More importantly, this study concluded that alternative marketing agreements do benefit all segments of the cattle industry. It is through these marketing agreements that consumers are able to buy specialized products such as Certified Angus or Ranchers Reserve, or all-natural products.

Competition issues are nothing new to this body. I agree our producers need to be able to compete in today's markets. I share the concern of the Senator from Montana in this regard. It is the role of the Government to protect producers from unfair practices and monopolies. I understand the calls from some for increased Government involvement. At the same time, we must take careful steps to ensure that in any action we might take, we do not suffer from the law of unintended consequences and risk the significant gains the livestock industry has experienced to meet our consumers' needs. Regardless of the Senator's intent—I don't question that—I am concerned this amendment does that.

This amendment takes away a business's ability to make decisions freely. Let me lay out a scenario I think can be fully understood. Let's say you are a producer who has developed a program that produces a higher quality product than I, another producer, and both of us are trying to sell our product to the same packer. If the packer picks you, not me, or any other producer to fill the contract because your product does perform better or meets the demands of the customer, under this amendment, I can bring a lawsuit for that or that other producer can bring a lawsuit against the packer, even though they were making a decision based on sound business principles. The language is as clear as day in this amendment, ''regardless of any alleged business justification.'' Certainly, a packer can defend their cattle buying choices as a business justification.

This amendment would allow lawsuits to be filed regardless of this business justification. This amendment will result in all producers being treated the same—sounds good—regardless of how efficient or inefficient their operation may be and regardless of the quality of product they produce.

I know it would be easy, maybe nostalgic, maybe something we would want to do as we are sitting around having a cup of coffee, to return to the production days of 20 or 30 years ago. The market has changed dramatically. Production today is more efficient because of consumer demands. In this regard, the consumer is king. They want specialized products. They want all-natural beef. They want Certified Angus. They want U.S. premium beef or many other products that are produced under specified standards that meet a higher quality. Thankfully, the entire livestock industry, from growers

to feeders to packers to retailers, has made great strides in recent years to meet the demands of the marketplace. I am concerned this amendment puts all these consumer, market-driven products and investment at risk. This amendment does discourage innovation in the industry. Our producers would receive no premiums for adding value to their products. Why would anyone invest additional resources into their production system if they were not allowed to receive a return on their investment? This amendment, combined with the language in the underlying bill, will spur lawsuit after lawsuit and stifle innovation. This amendment does remove choices from producers and from processors and consumers.

I urge my colleagues to oppose it.

The PRESIDING OFFICER. Who yields time?

The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I believe my colleague had 15 minutes yielded to him. I ask unanimous consent to use the remainder of his time to speak on the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWNBACK. May I inquire how much time remains?

The PRESIDING OFFICER. There is 8½ minutes.

Mr. BROWNBACK. Mr. President, I join my colleague from Kansas in opposition to the Tester amendment. I appreciate my colleague from Montana offering this amendment. I respect his background and knowledge. He has worked in this field. He has lived this. He is living it in his own operation in Montana. I have a lot of respect for that and for what he is targeting. I have spent all my life in the agricultural business. I was raised on a farm, have undergraduate degrees in agriculture. I was Secretary of Agriculture in Kansas. I have worked on these issues a long time. We have all wanted to get more money in agriculture and keep more family farms operating. That is everybody's desire. I believe that is the desire and intent of this amendment.

However, in my State in Kansas, as my colleague has described, this is going to hurt family farm operations, and it will hurt people who are trying to get more money in their operation from the marketplace. I would like to briefly describe one example I recently experienced, an operation of a small family feed yard that does operate for a number of different individuals in the eastern part of Kansas. It is the Knight Feedlot. They have been operating for quite a few years in Lyons, KS. They have an innovative program. It is an alternative marketing program. They raise hormone-free, antibiotic-free cattle. They sell the meat directly from this feed yard into premium grocery stores in Connecticut and New York. It is the sort of thing many of us have been talking about. Let's get the producer closer to the consumer and sell the product they want. This is hormone-free, antibiotic-free beef. Anybody in this room who has raised cattle knows that if you are going to go hormone free and antibiotic free, you have increased your risk and the cost of your operation substantially to meet that consumer need. These guys are doing that. Any animal that gets sick, they have to pull out of the program because they have to keep the animal alive. To do it, they are going to use antibiotics, so the animal is out of the program when that takes place. It winnows down fairly fast. When you get weather fluctuations such as are taking place now, you get more problems and more animals out of the program.

But eventually, because of a contractual operation they have with a packer—because these are feeders, they are not packers—they are able to get their animals identified through the system, they are able to get the packer to deliver that meat to the counter in Connecticut and New York, because my Kansas feeders are not lined up to do that, they have a contractual arrangement to do that, and, as a result, they are able to get a substantial premium for their beef.

The consumer in Connecticut and New York can see who produces it, and the pictures of Kenny and Mark Knight are by the display counter on the beef case in these stores. They have been there, and they have been there to sell their beef. It works. It works for them, and they get a substantial premium for this beef. The consumer likes it, and they like seeing who has produced their beef.

That operation would be illegal under the direction of this amendment. I believe this amendment would generate lawsuits against that very type of operation.

I respect my colleague from Montana and his efforts to preserve the family farm operation—family farm operations like what my parents have and my brother is on. This amendment is not the way. It is micromanagement from here. One of the things I have certainly seen is you cannot micromanage America, and you should not try. The best is to set up fair playing rules. We have rules in this system. But we should not punish people who are trying to innovate to get more money for their producers in innovative fashions and using alternate marketing means and being successful at it.

The Knights had to invest a substantial amount of money to get this arrangement set. They had to hire somebody to do the marketing. They had to hire somebody and get enough cattle to be able to enter into a contractual arrangement with the packer to keep these cattle identified and keep them identified to be able to deliver to the consumers in Connecticut and New York. Without that, they are not packers, they cannot do this. This amendment would hurt their operation. As a matter of fact, it would make it illegal and bring lawsuits against it.

I urge my colleagues to vote against this amendment on a number of grounds: No. 1, it prohibits innovation, and No. 2, it really tries to micromanage something we should not try to micromanage. It is going to hurt my Kansas feeders.

For all those reasons, I urge opposition to the Tester amendment.

I yield the floor and reserve the remainder of the time, if there is any on our side on this.

The PRESIDING OFFICER (Mr. BROWN). Who yields time?

Mr. CRAIG. Mr. President, may I make an inquiry?

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Are there any more who wish to debate the Tester amendment prior to us moving to—

Mr. TESTER. Yes.

Mr. CRAIG. All right.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. TESTER. Mr. President, first of all, I want to thank the good Senators from Kansas for their comments. I, too, respect your opinion. I ask that you pay careful attention to what I am about to say. I am actually in the specialty crop business personally. It has been well documented, I raise organic crops. I do not raise organic beef, but I am around people who raise organic beef and market it freely. They will be able to continue to market it freely with the adoption of this amendment. So the folks, the Knights you talked about, in Kansas are still going to be able to market their hormone-free beef.

It speaks specifically in the Packers and Stockyards Act about restraining commerce and creating a monopoly. They cannot have an alleged business justification to do that. When you are adding value to a product, you are increasing the value. When you are raising specialty crops or you are specializing in grass-fed beef or specializing in hormone-fed beef or antibiotic-fed beef, you still have access to those premium prices.

What the Packers and Stockyards Act does is it protects the cattle producers and those feeders you talked about. It allows them to stay in business, to be able to get that premium price. What this amendment does is protects them from those four packers—who control 80 percent of the country's meat supply; and it could be fewer than that next year controlling 80 percent of the meat supply if they buy one another out—it protects them from those four packers setting prices by using an alleged business justification to create a monopoly or restrain the commerce around the meatpacking industry.

It is critically important that you know that the unintended consequences you talk about are not going to exist with this amendment. Those unintended consequences are simply not there. What this amendment will do is it will reinstate the free market system in our cattle industry.

The point I made earlier, in my opening statement, is where you can literally have four CEOs of four companies that control 80 percent of the meatpacking industry be able to manipulate forward contracts, be able to manipulate the transactions within their business, and put on a business justification for it, and now all of a sudden it is OK under the Packers and Stockyards Act. That simply is not right. We ought not go encouraging monopolization anywhere, much less in agriculture that puts our producers at risk to driving them off the ranches in this country.

In Montana, we have about four times as many cattle as we do people, I believe. It is a big issue. Premiums are still going to be there. Specialized beef is still going to be there. The ability to add value to our meat products is still going to be there for them to get the price they deserve for it. What this will stop is the meatpackers from—and I read right straight from the Packers and Stockyards Act—restraining commerce, creating a monopoly, regardless of any alleged business justification.

Next paragraph: restraining commerce, regardless of any alleged business justification.

The last time I heard, the last time I checked, if you are getting paid a premium, you are not restraining commerce, you are promoting commerce.

And it goes on: to manipulate or control prices regardless of any alleged business justification.

There are no boogeymen in these amendments, folks. This is a good amendment. We dealt with an amendment yesterday that talked about producers and the kind of pressures they are under and the mental health aspects that impact farmers and ranchers when they are put under financial pressures. I believe we adopted that amendment.

The fact is, if you want to help farmers' and ranchers' success, adopt this amendment. It will make them more financially vibrant.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. Mr. President, how much time remains?

The PRESIDING OFFICER. The sponsor of the amendment has 19 minutes, and there is 17 minutes for the opposition.

Mr. HARKIN. We have 19 minutes?

The PRESIDING OFFICER. The sponsor has 19 minutes; the opposition has 17 minutes.

Mr. HARKIN. Mr. President, I ask the Senator, will he yield me 4 or 5 minutes?

Mr. TESTER. You bet.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I rise in support of the amendment offered by the Senator from Montana. I am a cosponsor of the amendment.

First, I will just make an observation. In this body, out of 100 Senators, we have 2 bona fide farmers, one on the Republican side, my colleague from Iowa, Senator GRASSLEY, and one on our side, the Senator from Montana, Mr. TESTER. These are people who actually do farm—not just own a farm, but they actually do farm. So when I hear them talk about things in agriculture, I give a lot of weight to it, not that they are always right, obviously. They would not claim that, I am sure. But you have to give some weight to their arguments, especially when they are making it on behalf of farmers.

So when this amendment was first offered by the Senator from Montana, I began to look at it and consider it because I, too, had thought about the issues raised by the Senators from Kansas about whether it would be restrictive of a packer who wanted to provide premiums. I think he maybe mentioned an Angus cut or a cowboy cut, Black Angus bone-in rib eye, those that have premiums.

So I was concerned. I asked my staff: Let's look at this and make sure we are OK on this. I think the way the amendment is drafted does, in fact, allow those kinds of contracts to be made because they are not manipulative of a marketplace.

What the Tester amendment really goes to, I think—and I think it is clear in the way it is drafted—it goes to the packers who, let's say, might engage in collusive practices that would, in fact, depress the market price on a certain day or during a certain time and then claim they have a pro-business reason for doing so.

I have not seen a business yet, in case after case—where they have colluded or where there has been some dealings—where they have not said, well, it is better for their business. Of course, if they can increase their profits, it is always better for their business, but increasing their profits at what expense? At the expense of a farmer who is relying upon the livestock market.

So I think the amendment is one that really gets to the heart of the case, the Pickett case. We all know about the Pickett case. I think the Eleventh Circuit Court of Appeals really went riding off the range. I do not know where they came up with some of their thoughts on that. It is not the first time that the courts have gotten off course.

The Packers and Stockyards Act was enacted to protect producers from packers. That was the intent, and it has been the intent ever since, to protect producers from packers. It was never intended to be some bill to ensure that packers are competitive or that they are competitive with other packers. That was never the intent of the Packers and Stockyards Act. It is to protect producers from packers to make sure there is as level a playing field as possible out there for the market to work.

Markets: many buyers, many sellers—that is how a market works. If you have many buyers and one seller, no market. If you have one buyer and many sellers, no market. You have to have many buyers and many sellers for the market to work. That is what the Packers and Stockyards Act aims to protect.

So, again, the amendment is not in any way intended to infringe upon contracts or forward contracts or the kinds of contracts that were mentioned in terms of giving premium prices for different kinds of meat produced. It was never intended—I know the Senator talked about the law of unintended consequences, but, again, I think the amendment is clear. The intent is to ensure anti-competitive practices in the marketplace are not allowed—are not allowed—regardless of a business justification.

So, again, right now I think we have a case where the packers—I know a lot of them—I would like to say the ones I know are honest and above board, and they are. But that does not mean they all are. When it comes to making a profit here, maybe dealing something on the side. Eventually they will think they have a green light to engage in collusive practices to manipulate the market, and all you have to do is go into court and say: Business justification. What is the business justification? I made more money. I made more money. But at whose expense? At whose expense?

That is why this amendment is so important. I think it is important we shine a light and at least clarify for our producers that the Eleventh Circuit Court's opinion on this is not the law of the land. We decide the law, not the Eleventh Circuit Court of Appeals.

Mr. HARKIN. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. CHAMBLISS. Mr. President, I rise today in opposition to this amendment.

I, too, have great deference to those folks who till the soil and produce products that we all enjoy as consumers from an agricultural perspective. I am not a farmer, but I am a lawyer. I have read laws all my life. Frankly, all you have to do is read this amendment to realize that the amendment would prevent businesses from using legitimate business justifications as a defense against claims of unlawful practices under the Packers and Stockyards Act.

I would simply go to the first page, section 2, where it says on page 1232 that we are going to strike the clause regardless of any business justification. This clearly is a determination that should be left to the discretion of the U.S. courts and not summarily decided in advance by Congress.

A business should be able to offer as a defense that their actions were done legitimately as a means of conducting business. The court has the option to

examine this defense and gauge it against those practices deemed unlawful under the Packers and Stockyards Act.

If a producer believes a packer has conspired to create a monopoly, he has a right to sue that packer. What if the packer's decision was made not as an effort to create a monopoly but as an effort to secure higher quality cattle from a consistent supplier? The courts simply must have the discretion to make this determination.

Including language in the Packers and Stockyards Act that enumerates unlawful practices and adds the phrase ''regardless of any alleged business justification'' is simply prejudicial against American businesses.

I am sympathetic to producers who are concerned about their evolving role in the livestock marketplace, but this amendment is overreaching and will inject uncertainty into legitimate business decisions.

Let's not attempt to stack the deck on behalf of one party over another. We should allow the courts all due discretion in determining if the actions of American businesses are justified under the Packers and Stockyards Act.

I urge my colleagues to vote against this amendment.

Mr. President, I am happy to yield to the Senator from Kansas, Mr. BROWNBACK.

Mr. BROWNBACK. Mr. President, how much time remains in opposition?

The PRESIDING OFFICER. The opposition has 15 minutes remaining.

Mr. BROWNBACK. Mr. President, I wish to use 5 minutes of that time.

I respect those who do farm. My dad does, and I have a lot of respect for him. I have a brother who farms as well, and it is tough. It is a hard life.

I went to law school, and in my background I taught agricultural law. I have written two books on it, if anybody is interested. I don't think they are still for sale because they never sold very well.

But my point in saying that is one of the key things which is always talked about in agriculture is the Packers and Stockyards Act. It was developed back in the 1920s and 1930s because of this imbalance that was developing and was really heightened at that point in time even more so than today between the packers and producers. There were a lot more producers that were a lot smaller at that point in time and taken advantage of by packers. It was a very unscrupulous setting, and they passed the Packers and Stockyards Act. It was a very important piece of legislation, particularly in farm country, and it did have a substantial impact and continues to have a substantial impact today.

The situation today is different than it was back then. What you have now are a number of producers that are, in many cases, of a larger scale and trying to get closer to the consumer. You have small producers as well, such as my family, who are small producers and who often will link up with bigger sized producers and feed yards to try to get more money for their cattle. Everybody is trying to get more money for their cattle, and that is what I want to take place: more money for the producer for the cattle.

Unfortunately, because of the way this is drafted and because of being a lawyer and being somebody in the agricultural industry—and you are taking away: regardless of any alleged business justification. So my family says we are going to try this hormone-free, antibiotic-free beef, but we have to pool together at a feed yard that is big enough to negotiate with the packers to do this, and so they do that. We have 1,000 head of cattle from everybody—all 20 or more people who are doing this—and then they are going to market it directly on forward. That is a business justification to pay my family more for their cattle. That is a business justification for them to do it.

But we have taken it right out of here. We have said: regardless of any alleged business justification.

So, now, while my family is trying to move with this packer group through the feed yard to get closer to the consumer to take advantage of this, which is a business justification, this says, no, you can't assume that in the Packers and Stockyards Act. So somebody on the other side of this, or somebody just wanting to be ornery about it says: Look, you can't do that. You can't do it. It is right here.

I know the author's intent is not that intent. I also am a lawyer. This is something you can do under this draft of it. I appreciate the sentiment with which this is made. I appreciate the history of the Packers and Stockyards Act. It has been important. It remains important today. This isn't the way to get at this. This is going to cause people to have to go back to a generic marketplace for beef. You can say: Well, I am fine with a generic marketplace for beef—most people are—but there are a lot of people who like specialty beef. That is where the producer gets in and gets a bigger slice of the pie is when he goes at the narrow marketplace for a specialty-type product and segments his marketplace. This, I honestly believe, is going to cut off these types of arrangements for farm families in my State, and I believe a lot of other places, to be able to get into them.

I understand the intent. I look at it on the surface, and we could probably say good idea, but this is something whereby lawyers who practice in this field are going to see a real opportunity to shut something off, and I think there are plenty of people who are desirous of doing something like that. I would urge my colleagues to vote against this amendment.

I retain the remainder of our time.

The PRESIDING OFFICER. Who yields time?

Mr. GRASSLEY. Would the Senator from Montana yield me some time, please?

Mr. TESTER. Yes.

Mr. GRASSLEY. Why don't you say how much I can have.

Mr. TESTER. How much do you want?

Mr. GRASSLEY. I would like to have 5 minutes.

Mr. TESTER. I yield 5 minutes to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa is recognized for 5 minutes.

Mr. GRASSLEY. Mr. President, what the Senator from Montana is trying to do has to be done if we are going to have justice for the family farmer. We have been involved in suits regarding the packing houses for 20 years. I remember when I first came to Congress, we were trying to overturn the Illinois Brick case because it stood in the way of the family farmer getting justice in business. So you end up fighting the National Manufacturers Association and the U.S. Chamber of Commerce to bring justice to family farmers.

Finally, in a lawsuit down in Alabama, we get a jury who says the family farmer is right, but you get a judge who overrules the jury.

Now, I want to speak about not just this particular case, because Senator TESTER is doing that, but I hope everybody in this Senate remembers that on several different occasions, everybody in the food chain beyond the farmer's gate was lining up against the farmer. I will cite just a recent example in regard to food and fuel and the ethanol issue and corn going to $4 and the price of food going up and every farmer getting blamed for it. Every person in the food chain outside of the farmer's gate was involved in that conspiracy that had nothing to do with the price of food rising, but the family farmer got blamed for it when food went to $4—or when corn went to $4. But when the price of corn went down to $2.85, I didn't see the price of food go down. But the conspiracy exists.

This court case and this judge and this ruling on the Packers and Stockyards Act is contributing to that conspiracy. We need to get behind it and get some justice for the family farmer.

Now, if you want to know why there is a justification in doing what we are doing, all you have to do is go to a statement that a CEO of a major corporation made a few years ago—a little bit unrelated to this, but somewhat related to it—which is: Why do slaughterhouses and packing companies own livestock? We own livestock, the answer was, in a very candid way; we own livestock because when prices are high, we kill our own, and when prices are low, we buy from the farmer.

What we need is a marketplace that has a great deal of transparency. We fight, trying to get information on sales from these packing companies under price discovery. We pass legislation to make price discovery real. Then we get regulations from the U.S. Department of Agriculture—we get regulations from the U.S. Department of

Agriculture to the extent that we do not meet the goals of the legislation, and we don't get as much information under the regulations of the Department.

I had a staff person who just wanted to go back to Iowa and work for the Department of Agriculture. He is going to work for the Packers and Stockyards Act. I said to him: You know, you want to go there because you don't want to do anything, because they don't do anything to help the family farmer. I didn't change his mind. He is still there working, and I hope he is doing a good job. He knows how I feel about it. Maybe he will actually get something done.

But we have to get rid of this attitude that you are going to let everybody beyond the farmer's gate gang up on the farmers, particularly when there is a court case where the jury is giving justice to the farmers.

We have to pass this amendment so we get justice for the family farmer.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. CHAMBLISS. Mr. President, can I inquire as to how much time is remaining?

The PRESIDING OFFICER. The supporters of the amendment have 7 minutes 30 seconds; the opponents have 10 minutes 40 seconds.

Mr. CHAMBLISS. I yield 5 minutes to the Senator from Kansas, Mr. ROBERTS.

Mr. ROBERTS. Mr. President, let me say to my good friend from Iowa who is shaking the hand of my good friend from Montana that justice and conspiracy are in the eyes of the beholder. I thank him for his feeling for agriculture and his passion for all of agriculture and all that he represents. He is an outstanding champion of agriculture. However, in this particular case, I don't agree.

I am going to use an example. Instead of cattle, I am going to use hogs. If producer A contracts with five neighboring producers to supply his contract with packer A, but he decides he only wants to buy from neighbor 1 and 2 because the others are currently having animal health issues, as referenced by my distinguished colleague from Kansas, the others are having these health issues impacting that producer A's performance and pricing. Neighbors 3 and 4 and 5 under this amendment can sue producer A because—yes, they have been injured because they are no longer selling hogs to producer A. So producer A's business defense is that animal disease issues in the barns of neighbors 3, 4, and 5 are producing weak performers, and he made a business decision to not buy from them.

The Tester amendment simply takes away that defense. This is hogs, not cattle. So producer A will lose and have to pay damages and attorney's fees. I don't think that is the road we want to go down.

Now, 20 years ago the beef industry lost market share. There have been a lot of studies as to why. Many livestock associations, State by State by State, knew they were losing market share while producing what is now defined as a generic commodity. Through innovation and management of genetics, premium products have been developed, and the consumer has responded. I mentioned the variety of products the consumers wish to buy and do buy. To return to this market scenario of 20 years will be a loss to consumers, a loss to producers, and, quite frankly, I am going to warn, there will be a movement to increase imports to meet these demands. If, in fact, this packer cannot get this particular product for a consumer demand and we have a generic commodity and we will not produce that, he will go overseas. He will ask for beef imports. That will be one of the laws of unintended effects.

I urge the defeat of the Tester amendment.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Montana is recognized.

Mr. TESTER. Mr. President, I thank the Senators from Kansas for their time. I appreciate a good discussion on the amendment. If they would not have come to the floor, we would not have had this good discussion. I also thank Senators GRASSLEY and HARKIN for cosponsoring this amendment. I particularly thank Senator HARKIN for his comments on the floor, and also Senator GRASSLEY for his comments.

Senator GRASSLEY and I are arguably the two folks in the Senate who are in production agriculture. I am very proud of that fact personally. I know Senator GRASSLEY is, too. I know everybody in this body wants to make sure that people in production agriculture get a fair shake—not over and above what they deserve but a fair shake. That is what the farmers want and what this bill is supposed to be about.

In this body, we all know you can only make good decisions if you have good information. We also know if you take just three words—and I will admit this is called the ''no justification amendment.'' But if you take those three words and set aside all of the other words around it, they don't mean a heck of a lot. You can interpret them to mean anything you want. I am not an attorney. I respect those in this body who are and folks around this country who are. But you need to take the entire bill and look at the language as it is inserted into the bill.

If a farmer or rancher has health issues with their herd, whether it is pork, chickens, beef, or any other livestock they are marketing for food purposes, they don't have to buy it. That isn't restraining trade or commerce. That is not creating a monopoly. That is what those words revolve around—those three words—''no business justification.'' You have to take at least the segment before, if you are going to get an idea of what it says. It says the effect of restraining commerce or creating a monopoly ''regardless of any alleged business justification.''

If you want to put the boots to the ranchers—it won't happen all the time, and let's hope it happens very little. In fact, if they don't put this amendment on the farm bill to make the Packers and Stockyards bill what it was when it was originally passed in 1921, you are not going to have a free market system. You are going to have a system where the four major packers can manipulate the marketplace when they feel like it. They may never feel like it. But if times get tough, what the heck, make a few extra bucks and keep the stockholders happy.

It was talked about today that it is going to make beef or pork into a generic commodity. I led the charge on country-of-origin labeling in Montana. We passed it in 2005. I want our products to be different. I am all in favor of certified Angus beef and grassfed and all those specialized things that the consumer wants. This bill doesn't take that ability away. If you have sick cattle, you don't have to buy them. If you have Angus certified beef, you can market it that way, as long as it meets their criteria—certified Angus beef I am talking about, not stockyards.

In fact, this is good for production agriculture. Senator GRASSLEY talked about farm gate prices. If you want to hold them artificially low and keep putting in subsidies, these are the kinds of things you do. If you want to have a free market system where people get a fair price for a fair day's work for the product they worked so hard to get on the market, the family farms and ranchers—cow/calf operators, in this particular case—this amendment needs to be passed.

How much time do I have?

The PRESIDING OFFICER. The Senator has 3 minutes 10 seconds.

Mr. TESTER. In closing, there are no unintended consequences here. This is straightforward. If you read the language as it goes in the Packers and Stockyards Act, it can be interpreted no other way other than if a company wants to restrain commerce or create a monopoly, period.

It will stop packers from, as Senator GRASSLEY talked about, dumping cattle when prices are high. It will make the market work better.

In closing, I again thank the Senators from Kansas. I thank Senator GRASSLEY and Senator HARKIN. I ask this body to take this amendment for what it is. It is an amendment that will indeed support family farm cow/calf producers on the ranches of this country.

Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. Two minutes. The opposition has 7 minutes 40 seconds.

Mr. CHAMBLISS. We have a couple more speakers who are on the way. As soon as they arrive, we will yield time to them.

Mr. TESTER. Mr. President, I will speak after they get done, so I will retain my 2 minutes.

Mr. CHAMBLISS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAMBLISS. Mr. President, I yield 5 minutes to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. BURR. Mr. President, I appreciate the generous offer from the ranking member.

This is tough. Senator TESTER is a friend, but he is misguided. The fact is that the law today has served us well in this country. I think it is vitally important for all Senators to realize that agriculture is a business that reacts and changes to market demands.

We have put legislation into place that allows the markets to operate, and these laws serve as guidelines for farmers in how they make their business plans for the future. As a matter of fact, we are the envy of the rest of the world. The agricultural markets in this country, the hogs raised and sold and eaten, the chickens and the turkeys—and in North Carolina's case, we rank extremely high; we are No. 2 in hogs and turkey production. I daresay every person in the room, and even in America, has eaten pork from North Carolina at one point or another. One of the reasons hog farmers in my State have been able to grow and produce the best pork in the world is the regulatory forces that govern the livestock industry.

What we are being asked to do in this amendment is to turn that on its head. Today, current law says if a producer wants to bring suit against a processor for injuries to the producer's business, they have to show that they have actually been injured. Let me restate that. Current law says if a producer wants to bring suit against a processor for injuries to the producer's business, they have to show they have actually been injured. That is a threshold that ought to be for everything that a suit is brought on.

Let me put in practical terms exactly what the Tester amendment would do. It would say that a company that contracts with a producer, a grower, and because they have determined that that grower has exceeded the minimum standards, has done things that technologically enhanced the products they are going to purchase, that if they reward them by paying them more money because the product is better, they are now susceptible to a grower who may not be dealing with 10,000 hogs, he may be dealing with 10 hogs. He might not adapt his surroundings to the new technologies; therefore, the meat is not as good. But if they are not paid the same, he will go to court and sue that he should have been paid the same thing as the contract for 10,000.

What is the net result of it? If I were in a State that had smaller producers who felt disadvantaged from a price, I might look at it differently, but what is the impact? The impact is that companies are not going to raise everybody's boat, they are going to lower everybody's boat. They are going to pay every producer less. There will be no incentive for new technologies to go into agriculture—specifically hogs, turkeys, and chickens. There will be no choice for consumers between grades of products, some that taste better than others, because we will now dumb down to what this new standard is, and that standard will be to make sure you are not susceptible to lawsuits. Everybody, regardless of size, regardless of the quality of the product, will be paid the same.

I will say that again. Regardless of the quality, regardless of the size of the purchase, because of this one little change, which is that you have to prove you were injured, producers will be obligated. You might say it is their choice; but if a choice is between being sued every time there are contracts that say different things, or accepting one standard and applying that to everybody, they are going to accept one standard and apply it to everybody because they cannot pass on the litigation costs of these foods.

Please tell me when 1 minute is left.

The PRESIDING OFFICER. The Senator has 30 seconds remaining.

Mr. BURR. I hope my colleagues here understand that the law, as currently written, works. It has served this country well and it has produced choice, it has produced quality, and it has fairly reimbursed all who entered into it. Let's not change it, and let's make sure the products that America has chosen and continues to choose in the marketplace are driven by the marketplace, not manipulated by this body in Washington.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. TESTER. Mr. President, I thank the Senator from North Carolina, my comrade in the Russell Building. I appreciate his comments. You have to have good information to make a good decision. There are a couple of things I need to point out. First, in production agriculture, we are not price makers, we are price takers. When you have 80 percent consolidation in the meat packing industry, you don't have much choice when they don't have this language in the Packers and Stockyards Act.

If you are talking about rewarding a grower because they have less fat, or bigger ribeye size, or leaner beef, this doesn't stop that from happening. I believe there are enough attorneys in the room that if you read this Packers and Stockyard Act in its entirety, which is about a page, you will find out that the alleged business justification applies to when you are restraining commerce or creating a monopoly. If you want a free market system, which you talked about, this body needs to pass this amendment so there is a free market in the pork, poultry, beef industry. Pork, by the way, is more consolidated than beef. Chickens are worse yet. All I want for farmers and ranchers and the people in production agriculture—the cow/calf operators, in particular—is that they get a fair shake.

If we pass this amendment No. 3666, you will allow those cow/calf operators to get a fair shake in the marketplace and be able to become financially viable, so this Government doesn't have to talk about subsidies, and they can get their paycheck from the marketplace, and it is a fair paycheck.

With that, I ask the Senate to vote for this amendment. I thank my fellow Members for the good debate.

The PRESIDING OFFICER. The Senator's time has expired. All time has expired.

The question is on agreeing to the amendment.

Mr. CHAMBLISS. Mr. President, have the yeas and nays been requested on this amendment?

The PRESIDING OFFICER. They have not.

Mr. CHAMBLISS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. BROWNBACK. Parliamentary inquiry as to whether this could be a voice vote so we can move on. We have a number of amendments. I inquire as to that issue. I will suggest the absence of a quorum to sort this issue through. We might be able to save the body some time. I wish to speak with people about it.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. ROBERTS. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue with the call of the roll.

The legislative clerk continued with the call of the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3720 WITHDRAWN

Mr. HARKIN. Mr. President, I ask unanimous consent that the Schumer amendment No. 3720 be withdrawn.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Idaho is recognized.

AMENDMENT NO. 3640

Mr. CRAIG. I ask unanimous consent that the pending amendment, the Tester amendment, be set aside and amendment 3640 be called up.

The PRESIDING OFFICER. Is there objection? The Senator from Iowa.

Mr. HARKIN. Will the Senator yield?

Mr. CRAIG. I will be happy to yield.

Mr. HARKIN. The yeas and nays have been ordered on the Tester amendment. I ask unanimous consent that the vote on or in relation to the Tester amendment occur at a time to be determined later.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there objection to the unanimous consent request from the senior Senator from Idaho, Mr. CRAIG? If not, the amendment is once again pending. The Senator from Idaho.

Mr. CRAIG. Mr. President, earlier on, we thought we had a 40-minute time agreement. We are going to start the debate on this amendment. Some of our colleagues want to discuss it. With that in mind, let me open the debate on amendment No. 3640, an amendment we think is critical to America's farmers and ranchers and the value of private property.

Ever since the Supreme Court in 2005 decided on the Kelo decision, I have felt and many others have felt, including the American Farm Bureau, that America's farmers' and ranchers' property is now at a greater risk today than ever before by the issuance of eminent domain, or the broadening of the power of Government as it relates to that issue.

I debated this amendment earlier. Several of my colleagues are on the floor and want to debate this amendment. Let me now turn to my colleague from Colorado, the senior Senator, Mr. ALLARD, and yield to him 10 minutes for the purpose of debate on this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Colorado is recognized.

Mr. ALLARD. Mr. President, I thank the Senator from Idaho for his leadership on this particular issue. I am involved because farmers and ranchers all over the country are being impacted by their land values since the Supreme Court's ruling in Kelo.

As was stated by the Farm Bureau, farmers and ranchers have been particularly vulnerable to States or local municipalities taking their land for private economic uses, open space or other purposes.

Farmlands in several States have already been taken for open space purposes. The Farm Bureau goes on to say the amendment would strongly discourage the exercise of eminent domain for open space purposes.

I have a strong record of supporting limitations on eminent domain. I have to rise on behalf of my farmers and ranchers in Colorado in support of Senator CRAIG's amendment. This amendment would protect farmland and ranchland throughout this great Nation from land condemnation for use as open space.

I wish to be clear at the outset that this amendment would not affect uses of eminent domain that have been found to be justified. There are a few legitimate uses for eminent domain powers. Necessary use of eminent domain for items such as utility corridors or military and national security needs would not be affected.

America's farmers and ranchers are some of the best land managers around. Not only do they manage their land in a manner making it the most productive in the world but also in a way that makes it some of the most scenic land in our country and certainly a valuable way of keeping open space because of the nature of their operations.

The vistas of rural America possess some of the most remarkable scenery in the world. However, while their beauty is remarkable, their true value lies in the foods and fibers they produce.

An unsettling trend is now unfolding in small towns and rural communities from coast to coast. The use of eminent domain to condemn working agricultural lands or lands that will be transferred from one private property owner to another. This is an expansive use of eminent domain.

This condemnation results not only in weakening our national security by threatening our food supply but harms the economies of rural America and steals—yes, steals—private land from rightful owners.

Senator CRAIG's amendment, which I support, along with Senator BROWNBACK, would discourage this disturbing occurrence. It prohibits access to Federal financial assistance for a period of 5 years to any State or unit of local government choosing to exercise the use of eminent domain to take working agricultural ground for the purpose of open space.

This reasonable and measured approach would help protect America's agricultural land by making governments weigh the need of taking land against their desire for Federal funds.

Senators should remember the right to own property was one of the key principles on which this Nation was founded. I daresay that if the Founding Fathers were here today, they would support passage of Senator CRAIG's amendment.

As Thomas Jefferson noted in 1775 in the Declaration on Taking Up Arms:

> The political institutions of America, its various soils and climates, opened a certain resource to the unfortunate and to the enterprising of every country and insured them the acquisition and free possession of property.

Let me say this again: ''The free possession of property'' is the principle the Craig amendment supports. I have a long legislative record of supporting the rights of the private property owner. The State of Colorado also has a long record of opposition to the taking of private property. As a Senator, I believe it is important to ensure that private property owners are able to retain possession of their land. There is a right way and a wrong way to do things. Working with willing sellers is the right way. Condemning working agricultural land for open space is the wrong way. I urge my colleagues to listen to their conscience and support this amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Idaho is recognized.

Mr. CRAIG. We are operating under an open time agreement. With that in mind, I yield 10 minutes to our agricultural counsel from the great State of Kansas, Senator BROWNBACK.

The PRESIDING OFFICER. The junior Senator from Kansas is recognized.

Mr. BROWNBACK. Mr. President, I am the senior Senator from Kansas to Senator ROBERTS. I wanted to acknowledge that on the floor.

Mr. CRAIG. I said ''counsel.''

Mr. BROWNBACK. I was called the junior Senator from Kansas.

The PRESIDING OFFICER. The Chair's mistake. I apologize.

Mr. BROWNBACK. I thank the Presiding Officer. I appreciate that greatly. I always need to watch my junior Senator and make sure he is in his place.

Mr. President, I note, properly, my junior Senator is the dean of the Kansas delegation, even if he is the junior Senator.

I rise in support of the Craig amendment. I wish to make comments that I think are pertinent and germane to the farm bill because I believe this admendment is pertinent and germane to the farm bill. I know colleagues are looking at this amendment saying it is a private property rights issue, it belongs in the Judiciary Committee and this is an issue we should track through that committee. This is an issue involving agricultural lands, which I think is wholly appropriate for the farm bill.

Also, private property issues are so key and central to farming in the United States. It is in many places dominantly private property issues. In the West, there are a lot of public lands and agricultural use in public lands areas. But private rights dominates throughout the agricultural system of our country. There was a shock sent out with the Kelo case when the Court said you now don't have to have this justification of a public use for private property to be taken and can condemn it.

Many were shocked on all sides of the aisle—right, left, middle, people in urban areas, people in rural areas. I wish to say specifically people from rural areas were particularly struck by this decision because they all feel an

attack frequently from people in governmental entities to take lands for power lines, parks, land that should go back to them in some cases, if it is a railroad line that has been abandoned and the deed said the land will revert to the farmland owner and then it is taken for a trail. People are saying wait a minute, I thought we had private property rights, basic in our constitution, basic in our philosophy, basic to agriculture.

This is a narrow issue to get at the Kelo decision. It is well crafted by the Senator from Idaho to support those private property rights. The amendment will deter States and local governments from taking working agricultural land against the will of the landowner only to designate that same land as open space. Here I think you can look at that and say, well, obviously, that is something we should protect, that private property right. If there is to be eminent domain, it has to be listed on a public purpose, like we have had eminent domain laws for some period of time now, and not just taking it to keep an open space. If that is to take place, there needs to be a different set and a different system rather than what is being allowed or expanded after Kelo by local or State units of government.

This narrows the decision of Kelo back to what it was prior to Kelo—a protection of private property rights. I think that is important. I think it is a key issue and one that is a top priority to agriculture and landowners. Indeed, the President of the American Farm Bureau Federation said after Kelo:

No one's home or farm and ranch land is safe from government seizure because of this ruling.

Well, let's make sure their land is safe. We can do that, and this is an amendment that helps to do that. I think it is an important amendment to help to do that. If you voted in support of private property rights, I would hope you would support the Craig amendment, whichever side of the aisle you are on, and say there is an appropriate way and there is an inappropriate way and the appropriate way to make sure you have eminent domain is for a public purpose and not just taking agricultural lands to maintain open spaces and reducing the value of that land or its workability as agriculture.

This is an important, good amendment, and I urge my colleagues to support it.

I yield back to the sponsor of the bill.

The PRESIDING OFFICER (Mrs. MCCASKILL). The Senator from Idaho.

Mr. CRAIG. Madam President, it is important for my colleagues to understand this is a private property rights debate. For some who have said, well, this is in the jurisdiction of the Judiciary Committee—and I understand the other side is going to ask for a 60-vote threshold—one of the reasons we are on the floor in a post-Kelo decision environment is because things are beginning to happen out there that frustrate all of us.

My colleague from Kansas echoes the sentiment of the American Farm Bureau and their president, speaking out about the risk now that open space property, farming property, ranching property has as a result of Kelo. Some would say on the floor it doesn't appear to be a problem. Let me suggest it is.

In Scattaway, NJ, a family protested its eviction from their 75-acre farm the town had seized under eminent domain for an open space designation. That happened in New Jersey. In Woodland, CA, in Yolo County, CA, the board of supervisors decided to seize a large area of farmland using eminent domain and declared the property open space. So here a government entity steps in and says: We are going to take open space and make it open space and we are going to use our power to do that—no willing seller, no willing buyer, a new shaping of eminent domain.

Eminent domain, as we knew it pre-Kelo, said, public use for a legitimate public use, and that usually almost always fell into rights of way, roads, power lines, and those kinds of things where, for the public good, access was being denied.

Kelo tipped that upside down.

New Brunswick, NJ. New Brunswick moved forward to condemn, using its power of eminent domain, a 104-acre farm. Open space again. Telluride, CO. The senior Senator from Colorado was on the floor supporting our amendment. The town decided to use its power of eminent domain to take about 570 acres of an 800-acre ranch and designate the property as open space. Once again, the power is being used.

That is why America's farmers and ranchers and America's agricultural organizations that represent them grow increasingly alarmed.

Sussex County, NJ. The State of New Jersey used its power of eminent domain to take 17 acres of working agricultural property to create a wetlands. Open space again.

Matthews, NC. York County, PA. York County, PA, was the one I used as I introduced this amendment a couple days ago, where the family fought, invested lots of money, and took on the county. As a result, two county supervisors were defeated in the election because they were going after private property for an open space designation, and the county said: Oh, no, you don't; you are out. Ultimately, the family won but at great expense defending their right of private property.

That is why the American Farm Bureau has said this is a high priority for us.

Madam President, Justice Sandra Day O'Connor, dissenting in Kelo v. the City of New London, which has tipped this eminent domain issue upside down, said this in her dissenting views, and it is so clear today the vision of this justice.

The outfall from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more.

She spoke with great wisdom, particularly about the victims—those are the property owners—because that is exactly what is happening out there.

Is open space necessary? You bet it is. Does open space have value? You bet it does. There is no question in an urbanizing environment, parks and parkland and open space is critical. Why not willing seller/willing buyer? Why not go into the market as a city that has taxing power or a county that has taxing power ought to do and say, you know, we are going to raise a bit to go out and buy a piece of open property, instead of taking it? Now, yes, they compensate in eminent domain, but they basically establish the price. They do not have to compete.

So Kelo tipped us upside down, because in New London, as we remember, the city used their right to take away private property and gave it to a private developer because there was someone who was holding up a development. They were trying to hold onto their land. This is a critical private property rights debate and so very necessary.

I mentioned the family in Pennsylvania. For over 3 years, in Pennsylvania, that family fought their local government. How do you do it? You hire attorneys. Attorneys are expensive. You do the battle, you set up the legal case, because the county—in this instance the county government—wanted to take the land. As I mentioned, it didn't sit well with the citizens. Most citizens respect the right of private property. Most citizens understand that under our Constitution, there is a legitimate purpose for taking, and it was called eminent domain when the public good and the public value was clear.

That is the issue. It is quite simple. Now, is it a judiciary issue? Yes, it is. It is also an agricultural, farm bill issue. The reason I am on the floor with the amendment is because this taking is beginning to accelerate across our Nation and our Judiciary Committee has done nothing, to date, to reshape the Kelo decision, to protect the rights of the private property owner beyond the legitimate public good, and it is an important thing we do. That is why we are speaking out at this moment, and that is why it is important.

I yield to the chairman of the Senate Ag Committee.

Mr. HARKIN. Will the Senator yield for a question?

Mr. CRAIG. Sure.

Mr. HARKIN. I have read the Senator's amendment. I have sat and read the whole thing.

Mr. CRAIG. It is quite simple.

Mr. HARKIN. It is quite simple. It doesn't take a lot of time to read it. Then I listened to the Senator talk about the Kelo decision.

I am not a fan of the Kelo decision either, but it seems to me the way the amendment is written—and I ask the Senator this—if someone, if a private farmer had farmland, and a private developer came in and got the local jurisdiction to condemn that farmland and take it for private development, that would be allowed under your amendment?

Mr. CRAIG. Our amendment speaks to open space versus open space.

Mr. HARKIN. I ask the question, though.

Mr. CRAIG. I do not disagree with your interpretation of the current amendment.

Mr. HARKIN. That is what I wanted to make clear; that the Kelo decision——

Mr. CRAIG. Well, I would like to have gone further than that. The concern we had, and what appears to be most visible today in the new use of Kelo, is open space for open space. Municipalities and counties are stepping out—with the cases I gave, Mr. Chairman—and saying that for purposes of parks, we find this is a new tool. Historically, parks were willing seller/willing buyer, and wetlands, and now other broader interpretations of ''public good.''

But Kelo, being specific and relating to private government entities taking property for private development, we do not speak to that. We think it is a broader issue that the judiciary ought to speak to.

Mr. HARKIN. I thank the Senator for yielding and engaging in this colloquy. I was listening to the Senator talk about the Kelo decision, but the Senator's amendment doesn't reach the Kelo decision.

Mr. CRAIG. Oh, I disagree totally.

Mr. HARKIN. Well, if you allow——

Mr. CRAIG. Madam President, let me respond. When the Senator says we don't reach the Kelo decision, we reach a portion of the Kelo decision that is now most frequently impacting farms and ranches, and that is open space for open space.

Municipalities and counties and in one instance, as I cited, a State, prior to Kelo, were not using these powers of eminent domain to acquire open space. They were going out and buying it in the market and competing for it. Now they are. So Kelo, in fact, is being used for this purpose. That is why we are addressing this.

Mr. HARKIN. I will have more to say about that later, but let me ask another question.

Under the Senator's amendment—I wish to make sure I read it correctly—if a local jurisdiction—planning and zoning—decided to condemn some land or to take land for a park, if the amendment were adopted and put into law, that would mean that jurisdiction, whatever that jurisdiction is—it could be a county or a State—couldn't even get any money for education. No title I money for education. They could not get special education money. Let's say, money for special education, they wouldn't be able to get that either; is that a correct reading? For 5 years, they couldn't get that?

Mr. CRAIG. If it were open and currently operating farmland and/or pasture land.

Mr. HARKIN. Yes.

Mr. CRAIG. For agricultural purposes, and they did that for open space purposes, there would obviously, if this were law today, be a great debate in that community. That community would say, you cannot use this power and put our educational monies at risk.

We say, yes, Government monies, Federal Government monies. So it would clearly have a dampening effect. You and I both know, because we have been at those different levels of government, that there are thresholds by which a planning and zoning entity of a county or a municipality can and cannot operate. Would it have a chilling effect? Yes. It would stop them from doing that. That is the intent. Would it put the educational money in jeopardy? No, it wouldn't because they wouldn't put it in jeopardy.

You can use scare tactics, you can create, if you will, stalking kinds of arguments. But you and I both know, in practicality, they are not going to put those other values at risk. Sewage and water money and all of the kinds of other things that you and I work hard to get for our communities—that is not going to be put at risk because what is going to happen is they are going to quit using the Kelo decision. They are going to quit using eminent domain in its broadest sense until this Congress gets back in the business of shaping it again. That is why we are doing what we are doing here.

Mr. HARKIN. I think, then, we get to the crux of this issue. What the amendment of the Senator does is it has the Federal Government telling a local entity, a local government or a State government what it can and cannot do within its own jurisdiction.

This is a very powerful Federal Government, a heavy hand coming in telling people that we know better than they what they should be doing.

Mr. CRAIG. The Senator knows as well as I do that, with wetlands, with endangered species, you name it, the Federal Government, by law, by statute, by regulation, by Clean Water Act, does a lot of things. It is hard to deny that we do because local entities operate under those laws. We are simply asking local entities, in their exercise of eminent domain, to operate within the law. This amendment, broadly supported by American agriculture for fear of taking of their land, and by the livestock industry, and by the Public Land Council and others, says: No, don't do that.

You can point out, if you will, those kinds of arguments. But they are hollow in the sense that we constantly do that, and we have done that. Local governments operate under both local jurisdiction, local law, State and Federal law. So I do not see that as a problem. It can be argued, but it is not precedent setting in any sense of the word.

Mr. HARKIN. I say to my friend from Idaho that all of the things he mentioned—the Clean Water Act and all that kind of stuff—we can get into that, but, yes, if a local entity violates that, they are subject to certain sanctions, usually fines.

Mr. CRAIG. Yes.

Mr. HARKIN. They are not subject to losing all their Federal money for education, for health, for transportation, for everything else—nothing like that. I know of no instance like that in any Federal legislation. If the Senator can find one for me I would appreciate it. I can't.

Mr. CRAIG. I will not disagree with the Senator. I believe the taking of a person's wealth—and you and I in farm and ranch company know the assets of a farmer and rancher are tied in the land. It is their bank. It is their savings. It is their retirement. Some even like to pass it down generationally.

To have a municipality flex a new muscle that grew out of a decision at the Supreme Court level because of an entity in Connecticut using it is ominous and needs to have powerful teeth in it to say to that local municipality or county: Thou shalt not, for these very narrow purposes, use eminent domain.

I am saying you and I come from farm country. We know how valuable that land is. It is that farmer's or that rancher's savings. It is their retirement, should they choose to sell it, and they can sell it to the city for a park if they want to. But for a county or city to step in and take the land when you want to hand it to your daughter or your son or your grandson, generationally, to pass it down through for agricultural purposes—there ought to be teeth, very powerful teeth. I think counties and cities ought not be allowed to do it, period.

Mr. HARKIN. But it seems to me, I say to my friend, those are the governments that are closest to the people, rather than some distant government in Washington telling them what they can and cannot do. Plus, I say to my friend from Idaho, with all due respect, this did not grow out of the Kelo decision. Local governments have had the power of eminent domain probably going back to the founding of our Republic. I was trying to find out exactly when, but probably the early 1800s, maybe the 1700s.

Mr. CRAIG. I have under the Constitution for ''the defined public good,'' and the defined public good was very clear, and we defined it in statute.

Mr. HARKIN. But I say to my friend, defined public good has been parks and recreation areas and things like that.

Mr. CRAIG. But they have not—excuse me. Senator?

Mr. HARKIN. I say to my friend from Idaho I am sure he has visited Gettysburg. Gettysburg National Park would not be a national park were it not for

the power of the State of Pennsylvania to have the right of eminent domain because that is what they used. They had to use it in order to get that land together for Gettysburg Park. I say to my friend, with all due respect, it is a national historical monument. But that is what they had to use to do it.

Should Washington have been able to tell them no, you can't do that?

Mr. CRAIG. Right in the middle of Gettysburg is a private operating farm today. The reason it is there is because they would not allow it to be condemned, and they did not meet the threshold price of a willing seller, willing buyer. The State of Pennsylvania, for rights-of-ways of road, but other than that in almost every instance in my knowledge as it relates to Gettysburg, bought it, acquired it, and they used Federal money to get it and they used the Federal Park Service and a variety of other tools.

No, there is something new happening out there in a post-Kelo environment. You need to talk to your Farm Bureau in your State, and others, and your cattlemen and other farm organizations. Something new is happening in farmland, especially those lands adjacent to rapidly expanding urban environments. It is happening in a post-Kelo environment. That is why we are addressing it today on the Senate floor.

Mr. HARKIN. I say to my friend, again, the amendment doesn't even go to Kelo because my friend admitted a local government could condemn, eminent domain, take private farmland for a private developer. Under his amendment they can still do that.

Mr. CRAIG. We don't speak to that. We speak to the issue at hand today: taking private farmland in municipalities and urban areas, counties and States, for the purpose of open land, and that is a post-Kelo phenomenon.

Mr. HARKIN. It has been that way, as I say, going back to Gettysburg. They did use eminent domain in Gettysburg.

Mr. CRAIG. They did use some, yes, I don't deny that.

Mr. HARKIN. They carved out some sections where they didn't think they needed them, but they did on some other sections. So it has been that way forever. Kelo didn't open floodgates. What it did was open floodgates for private, and that I find anathema; that you could use eminent domain for some private purpose. But for a public purpose such as parks and recreation and things like that, it has been this way since the founding of our Republic, I say to my friend.

My friend, I know is a conservative. It seems to me conservatives are always looking askance at the Federal Government coming in, heavyhanded, and telling local jurisdictions what they can and cannot do. This, it seems to me, would be the heaviest hand that I have seen in my years here.

My friend is right. We, a lot of times, do pass laws, Clean Air Acts, things like that that he mentioned, and we impose fines if they don't do something. But we don't say if you violate it, we are taking away your education money, your health money, your transportation money, and everything else. I just know of no other case like that in Federal law.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Madam President, we have not yet a time limit. I have expressed the will and concern of those who are cosponsors of the amendment. I put into the record the expression of our largest national farm organization that sees the threat as clearly as I do, maybe less clear than the chairman sees it because there is a pattern rapidly growing out there in a post-Kelo environment—open space taken for open space purposes. They are taking it from the private landowner. We think there ought to be strong teeth here.

With that, I retain the remainder of my time. Others are here to debate the issue.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, I just have a few minutes. I know we want to get to the Brown amendment. The Senator from Ohio has been very patient, waiting a couple of days to get to his amendment. I appreciate that. I have just a couple of things I wanted to respond to.

First, regarding the Craig amendment, I have here a letter dated December 11 from the National League of Cities, the National Conference of State Legislatures, the U.S. Conference of Mayors, and the Council of State Governments, all writing in opposition to the Craig amendment.

It says—I just want to read what they said in this letter:

This amendment is not only ill-advised, but it is also unconstitutional. Amendment No. 3640 would preempt state and local land use laws by prohibiting any federal funding that goes to state and local governments from being used for acquiring ''farmland or gracing land for the purpose of a park, recreation, open space, conservation, preservation view, scenic vista, or similar purpose.'' This would severely chill state and local historical preservation, community service, and environmental efforts.

Under this amendment, if a state or locality were to use the power of eminent domain for virtually any public purpose, even if such action was completely in accordance with its own statues and land use development ordinances and regulations, the state or locality could lose all applicable federal funding. The 5th Amendment of the U.S. Constitution expressly permits the taking of private property for public use provided just compensation is provided to the owner of the property.

The power of eminent domain has always been, and should remain, a state and local power. The state power to use eminent domain for public purposes is fundamental to a state's and locality's ability to provide for the community needs of its citizens, to protect unique and scenic areas of a state by creating parks, and to preserve wildlife and topography of a significant nature.

Again, we urge you to reject the Craig Amendment No. 3640 because it preempts state and local law and thwarts valid state and local efforts to preserve their natural resources for the use and enjoyment of all citizens.

I ask unanimous consent the letter representing the National League of Cities, the National Conference of State Legislatures, U.S. Conference of Mayors, and the Council of State Governments be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DECEMBER 11, 2007.

Hon. TOM HARKIN,
Chair, Agriculture, Nutrition and Forestry Committee, U.S. Senate, Washington, DC.

DEAR SENATOR: On behalf of the undersigned organizations, we write in strong opposition to the amendment offered by Sen. Larry Craig (No. 3640) to H.R. 2419, the ''Food and Energy Security Act of 2007,'' which is scheduled for floor debate today. This amendment is not only ill-advised, but it is also unconstitutional. Amendment No. 3640 would preempt state and local land use laws by prohibiting any federal funding that goes to state and local governments from being used for acquiring ''farmland or gracing land for the purpose of a park, recreation, open space, conservation, preservation view, scenic vista, or similar purpose.'' This would severely chill state and local historical preservation, community service, and environmental efforts.

Under this amendment, if a state or locality were to use the power of eminent domain for virtually any public purpose, even if such action was completely in accordance with its own statues and land use development ordinances and regulations, the state or locality could lose all applicable federal funding. The 5th Amendment of the U.S. Constitution expressly permits the taking of private property for public use provided just compensation is provided to the owner of the property.

The power of eminent domain has always been, and should remain, a state and local power. The state power to use eminent domain for public purposes is fundamental to a state's and locality's ability to provide for the community needs of its citizens, to protect unique and scenic areas of a state by creating parks, and to preserve wildlife and topography of a significant nature.

Again, we urge you to reject the Craig Amendment No. 3640 because it preempts state and local law and thwarts valid state and local efforts to preserve their natural resources for the use and enjoyment of all citizens.

DON BORUT,
Executive Director, National League of Cities.
CARL TUBBESING,
Deputy Executive Director, National Conference of State Legislatures.
TOM COCHRAN,
Executive Director, The U.S. Conference Of Mayors.
JIM BROWN,
Washington Director, Council of State Governments.

Mr. HARKIN. I have a letter of December 11 from a number of environmental and wildlife groups: National Audubon Society, Defenders of Wildlife, National Resources Defense Council, Sierra Club, the Wilderness Society, the World Wildlife Fund and others, in opposition to the Craig amendment.

I ask unanimous consent that letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DECEMBER 11, 2007.

Re Oppose Craig Farm Bill Amendment.

Hon. TOM HARKIN,
Chairman, U.S. Senate Agriculture, Nutrition & Forestry Committee.
Hon. SAXBY CHAMBLISS,
Ranking Member, U.S. Senate Agriculture, Nutrition & Forestry Committee.
Hon. PATRICK LEAHY,
Chairman, U.S. Senate Judiciary Committee.
Hon. ARLEN SPECTER,
Ranking Member, U.S. Senate Judiciary Committee.

DEAR SENATORS: On behalf of our members and supporters, we strongly urge you to oppose the amendment Senator Craig (R–ID) has introduced to the Food and Energy Security Act of 2007 that would prohibit all state, local, and federal use of eminent domain to take farmland or grazing land into public ownership for the purposes of a park, recreation, open space, conservation, preservation view, scenic vista, or similar purposes. It would impose severe sanctions on any state or unit of local government that uses eminent domain for these purposes—a five-year loss of financial assistance and all federal funds appropriated through an Act of Congress or otherwise expended by the Treasury. The Craig amendment arbitrarily imposes absolute bans on certain longstanding uses of eminent domain for public use while totally excluding others, including prisons, public utilities, roads or rights of way open to the public or common carriers, pipelines, and similar uses.

Acquiring land by purchase or donation is preferable, but there are times when eminent domain is necessary and appropriate, both for the public uses that would always be banned by the Craig amendment and those that would always be allowed.

Congress and the courts have repeatedly recognized that local, state, and national parks and recreation, open space, conservation, preservation view, and scenic vistas are clearly valuable public uses that justify eminent domain. For example, the Congressional Research Service's Annotated Constitution cites laws and cases upholding eminent domain, including an 1896 Supreme Court decision confirming the right to condemn in order to ''promote the general welfare'' by preserving an historic site (the Gettysburg Battlefield) for public use and protection.

''E.g., Shoemaker v. United States, 147 U.S. 282 (1893) (establishment of public park in District of Columbia); Rindge Co. v. Los Angeles County, 262 U.S. 700 (1923) (scenic highway); Brown v. United States, 263 U.S. 78 (1923) (condemnation of property near town flooded by establishment of reservoir in order to locate a new townsite, even though there might be some surplus lots to be sold); United States v. Gettysburg Electric Ry., 160 U.S. 668 (1896), and Roe v. Kansas ex rel. Smith, 278 U.S. 191 (1929) (historic sites). When time is deemed to be of the essence, Congress takes land directly by statute, authorizing procedures by which owners of appropriated land may obtain just compensation. See, e.g., Pub. L. No. 90–545, Sec. 3, 82 Stat. 931 (1968), 16 U.S.C. Sec. 79 (c) (taking land for creation of Redwood National Park); Pub. L. No. 93–444, 88 Stat. 1304 (1974) (taking lands for addition to Piscataway Park, Maryland); Pub. L. No. 100–647, Sec. 10002 (1988) (taking lands for addition to Manassas National Battlefield Park).''

The Craig amendment would be a draconian infringement on federalism by the federal government into the traditional rights of state and local governments. It would even ban uses of eminent domain to clear title when no one objects.

The Craig amendment would devastate the ability of states, localities, and the Federal governments to create and protect public parks, to provide for conservation of essential resources and recreation, and to preserve open space. Sometimes, the ability to require a property owner to sell property at a fair price is needed to deal with an unjustifiable ''hold out'' who seeks to stop a worthy public project, or to extort a monopolist's profits from the public.

Finally, as the Congressional Research Service explained about a different proposal, there does not: ''seem to be any proportionality requirement between the prohibited condemnations and the length and scope of the federal funds suspension. If Congress' Spending Power includes a proportionality requirement for conditions on federal funds, as the [Supreme] Court suggests, the absence of proportionality in some of the bill's applications may raise a constitutional issue.''

For all these reasons, we urge you to oppose the Craig amendment.

Sincerely,

Jason Jordan, Government Affairs Manager, American Planning Association; William Snape, Senior Counsel, Center for Biological Diversity; Brian Hires, Colorado Field Coordinator, Center for Native Ecosystems; Bob Dreher, Vice President for Conservation Law, Defenders of Wildlife; Anna Aurilio, Director, Washington DC Office, Environment America; Brian Moore, Director, Budget and Appropriations, National Audubon Society; Karen Wayland, Legislative Director, Natural Resources Defense Council.

Linda Lance, Vice-President for Public Policy, The Wilderness Society; Doug Kendall, Executive Director, Community Rights Counsel; Martin Hayden, Legislative Director, Earthjustice; Sandra Schubert, JD, MA, Director of Government Affairs, Environmental Working Group; Julie M. Sibbing, Senior Program Manager for Agriculture and Wetlands Policy, National Wildlife Federation; Ed Hopkins, Director, Environmental Quality Program, Sierra Club; Jessica McGlyn, Senior Program Officer, World Wildlife Fund.

Mr. HARKIN. Madam President, I think the Craig amendment, about which I just engaged in a colloquy with my friend from Idaho, the Craig amendment really is the heaviest of heavy hands I have ever seen proposed for the Federal Government. First, I do believe also, as I just stated, it does violate the fifth amendment to the Constitution. Also, it doesn't even get to the Kelo decision.

As the Senator himself admitted, even under his own amendment we would have the oddest of all situations. It would then be permissible for a local entity to condemn private land for private use, but it would not be permissible for a local entity to condemn private land for public use. That is the oddest of all circumstances. Again, to say to a local entity that you cannot use the power of eminent domain, granted to you by the Constitution of the United States, for a park or recreation area or whatever it is, a public use for future generations to enjoy—to me, that is an interference in local government and local government decisions.

My friend talked about, yes, somebody may want to pass farmland on to future generations and things like that. I am very sensitive to that. Yes, they should be able to. But shouldn't also a local entity or a State devise parks and recreation areas, also for future generations? There seems to be some thought if a State uses its power of eminent domain, they can just take the land away. The fifth amendment of the Constitution says, no, you have to have just compensation. That is where you get into courts a lot of times.

We have seen eminent domain used for power lines, for example, to go across the State. Again, the amendment of the Senator, I don't know if it would reach the power lines.

Mr. CRAIG. Will the Senator yield for that?

Mr. HARKIN. Yes.

Mr. CRAIG. It is important to state for the record this amendment touches none of the standard uses of eminent domain and historic uses, and I said so and all the other Senators speaking to it said so. Rights-of-ways—this is open space land only. It is very clear, it is very targeted. It does not touch any other area of historic use of eminent domain. OK?

Mr. HARKIN. Madam President, well, I say to my friend, one of the historic uses of eminent domain has been for parks. When was Central Park in New York set aside? The power of eminent domain was for Central Park in New York. I think that has been over a hundred years.

Mr. CRAIG. And a lot of people had their land acquired and purchased; eminent domain was used.

Mr. HARKIN. I say to my friend, I do not have a catalog——

Mr. CRAIG. I think the RECORD is replete now with the fact that there has been an acceleration of counties and cities using it post-Kelo.

Mr. HARKIN. But my point——

Mr. CRAIG. I know what your point is; I know we should be speaking through the Chair for that purpose. In my opinion, it is a broadening of the definition of public use in a post-Kelo environment that has put America's agricultural land at risk in a greater way than ever before. That is why this amendment is brought to the floor.

Mr. HARKIN. I say to my friend from Idaho, that is the point I was trying to make, that you could still have condemnation purposes for a private power line. Maybe a farmer does not want that power line going over his land; he does not like those big cables going over his land.

The State can come in and say: Here is your compensation.

I do not like it.

OK. We use power of eminent domain. We will go to court, and they will build that power line right across your land.

The amendment of the Senator from Idaho would still permit that to happen, would still permit that to go on, still permit that to happen, but it would not permit a local entity to say:

We have a lot of land; we want to preserve a park for future generations. We have some of this land here that is in there, and we need that for the park, and it is generally accepted by the public. You may have one person reticent to do that. So they say: OK, we use the power of eminent domain to do that. But that does not mean they get the land; that means they have to go to court to decide what is just compensation under the fifth amendment.

I say to my friend from Idaho, if he really wants to pursue this, he ought to introduce an amendment to overturn the fifth amendment of the Constitution. Let's have a constitutional amendment. Who knows what it might be next. You think of this as a precedent. What is next? What is next that we might not agree with? Maybe we do not agree with speed limits. I say to my friend from Idaho, maybe we do not agree with what a State's speed limits are, so if you do not adhere to Federal standards on speed limits, we are going to take away all of your education and transportation and health money. How about education policy? Let's say we do not agree with the local school board. We do not agree with the local school board as to what its education policy is. It has to be what the Federal Government says, and if you do not adhere to it, we are going to take away your education money, your health money, your transportation money, and your community development money. We will take it away just because you do not agree with the Federal Government's policy on education. Zoning and other areas like that—think of what kind of a path we are going down if we adopt this amendment.

Again, I say this amendment would again intrude the Federal Government into the local and State jurisdictions that have been preserved by the Constitution of the United States. We ought not to go there.

Madam President, I hope now we are ready to turn to the Brown amendment. I thank the Senator for his patience.

The PRESIDING OFFICER. The Senator from Ohio.

AMENDMENT NO. 3819

Mr. BROWN. Madam President, I thank the chairman for his outstanding work.

Madam President, I call up amendment 3819.

The PRESIDING OFFICER. Is there objection to setting aside the current amendment? Without objection, it is so ordered. The amendment is pending.

Under the previous order, there will now be 60 minutes of debate equally divided between the sides.

The Senator from Ohio is recognized.

Mr. BROWN. On behalf of Senators SUNUNU, MCCASKILL—who is presiding—MCCAIN, DURBIN, and SCHUMER, I am proud today to offer the Reduction of Excess Subsidies to Crop Underwriters—or the RESCU—amendment to the farm bill.

Our bipartisan amendment takes dollars from where they do not belong, from oversubsidized crop insurers, and invests them in priorities with a return for the United States of America, such as nutrition programs and conservation programs and initiatives that create sustainable economic development in other countries and our own, which, after all, is the key to strong export markets and also to deficit reduction.

The RESCU amendment is based on a simple premise: When resources are limited, we simply cannot afford to waste them. We cannot afford to overpay crop insurers with tax dollars while underinvesting in programs that pay for themselves, programs that preserve farmland and deploy U.S. resources strategically in the global arena.

Our amendment does not increase the cost of crop insurance for any farmer. I repeat: Our amendment does not increase the cost of crop insurance for any farmer. In fact, it has no effect on premiums at all. It does not, as some will claim, dramatically reduce the margin for crop insurers, jeopardizing access to crop insurance. It draws from huge, bloated overpayments and astounding profit margins, making them a little less huge and a little less astounding.

Crop insurers will have no incentive to leave a business that continues to reward them so generously, as this Federal program does with these tax-dollar subsidies. They will have no incentive to leave a business that continues to reward them so generously for their involvement. I can assure you that before and after this amendment, if it is enacted, crop insurers will continue to be generously rewarded for their activities.

This amendment simply seizes an opportunity to do some good while doing no harm. It is a fiscally responsible amendment that reroutes insurance overpayments to accomplish several beneficial goals. Some of the dollars go toward deficit reduction, some of the dollars honor faith-based missions throughout the world by contributing to a like program that feeds hungry children in developing countries, and some of the dollars help family farmers become better stewards of our land and our natural resources. This amendment is not glamorous or earth-changing; it is simply an opportunity to move forward and to do the right thing.

I know some of my colleagues do not want to take any money from crop insurers. They want to continue to shovel more taxpayer dollars to crop insurers. As I mentioned, some of them are worried that taking these dollars will put crop insurers out of business. They are not really worried; that is what they will say. But you just can't get there from here. This amendment is not going to break the backs of those insurers; it is just going to mean slightly less huge profits for those insurers. Let's face it, this amendment does not take crop insurers to the cleaners; this amendment takes a little drop from their rather large bucket.

Federal crop insurance is an essential part of the farm safety net, as it should be and as it will continue to be. However, billions of dollars that are intended to benefit farmers are instead siphoned off by large crop insurance companies.

Listen to this number for a moment. Since 2000, farmers received $10.5 billion in benefits from the Crop Insurance Program, but it has cost taxpayers $19 billion to provide those benefits—$10 billion in benefits for farmers, $19 billion in taxpayer subsidies to get that $10 billion to the farmers. That is because the crop insurance companies have had such huge overpayments, huge profits during those 7 years.

So where does the difference go? According to GAO, crop insurance companies take 40 cents out of every dollar that Congress appropriate to help farmers. Think about that, 40 cents out of every dollar. No place operates that way. Medicare does not operate that way, Medicaid does not operate that way. No other insurance company does that well.

Look at this chart. Private property and casualty insurance profits, 8.3 percent; Federal crop insurance profits more than double that, 17.8 percent. So slicing a little off here, they are still going to be close to double the profits of other private property insurance companies, property and casualty insurance companies.

In the same report, GAO found that crop insurance—this was a GAO report—company profits are more than double insurance industry averages. Again, over the past 10 years, crop insurance companies have almost an 18-percent return, while most of the rest of the private insurance market has an 8-percent return.

This amendment also reduces the exorbitant—I mean exorbitant administration fees crop insurance receives. For each policy they sell, the GAO report shows that the per-policy subsidies to insurance companies will be triple what they were less than 10 years ago. This is the money crop insurance companies receive. A&O is administration and operations. So whatever the premiums are, the Government then—already profitable for the crop insurance company—the Government then pays them a percentage—roughly 20 percent, slightly more than that—in addition so that they can administer and operate this insurance program.

Look, as prices have gone up, as the price of corn, for instance, and soybeans—which I have a huge growing crop, huge corn and soybean production in my State, one of the leading States in the country—the crop insurance companies make more and more money the higher the prices are because the premiums are then higher. If you think the price of corn is high, you are going to buy more insurance, the premiums are going to be higher, and

the A&O—administration and operations—subsidy is 20 percent of an increasingly higher number. That is why you see from $497 million, to $591 million, to $700 million, to 830 million, to, in 2007, $1.172 billion for these administrative bonuses, if you will. These delivery subsidies have tripled because they are linked, as I said, to the total premiums and thus the rising price, particularly of corn and soybeans.

This amendment will reduce the administrative subsidies for each policy to the national average of 2004 and 2006. This level is still well above every year prior to 2006. We are not taking them back to these numbers; we are just modestly bringing them back to this number. This number still was historically the highest ever. It is historically very generous to the crop insurance companies as a subsidy.

This amendment, I repeat, is no threat to the crop insurance industry. It is a threat to something—it is a threat to complacency. Instead of taking the painless route and leaving the crop insurance industry be, we can simply apply a dose of reason and do a world of good. We can help feed children in impoverished nations. We can help restore the McGovern-Dole Program—two of the most respected Members to have served in this distinguished body. We can help bring down, by hundreds of millions of dollars, something near and dear to the heart of Senator CONRAD, I know—we can bring down the Federal deficit.

Simply put, we can do the right thing. I hope Members on both sides of the aisle will support the amendment.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CHAMBLISS. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BROWN). Without objection, it is so ordered.

Mr. CHAMBLISS. Mr. President, I yield to the Senator from Kansas, Mr. ROBERTS, 15 minutes, followed by Senator GRASSLEY for up to 5 minutes.

The PRESIDING OFFICER. Is there objection?

Mrs. MCCASKILL. Mr. President, I know the Senator from Georgia has yielded to the Senator from Kansas. I am supposed to be presiding now. The kind Senator from Ohio assumed the chair to allow me to speak on our amendment. I hate to hold up the Senator from Ohio who has to leave. If I may, I ask unanimous consent to speak for a couple of minutes on this amendment.

The PRESIDING OFFICER. Is there objection?

Mr. CHAMBLISS. Mr. President, we are fine with that.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mrs. MCCASKILL. I appreciate the courtesy shown by the Senator from Georgia and, importantly, by my friend from Kansas who, although we disagree about football, I know we agree about protecting taxpayers.

Mr. President, we spend a lot of time here talking about whether we can afford things and trying to save money. My father was in the insurance business. In fact, he was commissioner of insurance in the State of Missouri when I was in high school and college. I have no problem with insurance companies making a profit. They are businesses; they should make profit. But we have to take a close look when it is taxpayer-subsidized profit. We are not talking about the normal profit of a private business. We are talking about taxpayer-subsidized profit. I don't care how you look at this insurance industry in this particular niche, this is a wildly profitable insurance industry right now, billions and billions of dollars in profit over the last several years. You have to ask yourself: Isn't there a way we can continue to make sure that crop insurance is readily available? Keep in mind this amendment does nothing whatsoever to cause costs to go up for the farmers. The premium subsidies remain the same.

What this does is say: We can't continue with the deficits we have. We can't afford to do children's health insurance. The President vetoes that. We can't afford another $11 billion for domestic spending. The President threatens a veto on that. We can't afford to do anything except make sure we subsidize a very profitable insurance industry.

We have to stop some of the ability of this particular niche industry. They don't even have to worry about antitrust laws because we have written that into the law for them.

This is a modest attempt. If our amendment had been in place in 2006, the companies still would have received $797 million in underwriting gains alone in comparison to the $885 million they actually received. We are not talking about putting anybody out of business. We are talking about doing what is right in terms of watching taxpayer dollars.

This is about priorities. I want the billions in subsidized profits to go where the needs are. There are many in this farm bill. That is where they are directed. There is also a great attempt to do something about these mind-numbing, jaw-dropping deficits. It seems a lot of our friends on the other side of the aisle don't want to pay for anything. They don't want to pay for AMT. They don't want to pay for anything in the Energy bill. If we keep going down this road, we should do away with an attempt to pay for anything and just print money, see how that works.

It is time we do the right thing on this particular taxpayer-subsidized profit and find a middle ground where we can continue to make sure crop insurance is available and affordable, which this amendment will do, but allow some of the taxpayer money to go to more urgent needs than major profits in this industry.

I thank my colleagues for their courtesy.

The PRESIDING OFFICER (Mrs. MCCASKILL). Who yields time?

Mr. CHAMBLISS. Madam President, I yield 15 minutes to the Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. ROBERTS. I thank the Presiding Officer and my friend from Georgia. I see the Senator from Missouri is the Presiding Officer. I wish her well in the Cotton Bowl against Arkansas, as we in Kansas go to the Orange Bowl. I hope she wishes us well.

Despite what has been said, I am rising in strong opposition to the Brown amendment which I think, bluntly put—and I will say it the way I think it is—would kill the crop insurance program, especially in certain sections of the country and, as a result, endanger a great many farmers. I have often said it is more important to prevent the passage of bad legislation—counterproductive legislation, if you will—than it is to add more legislation to the books, regardless of the argument. This amendment certainly falls into that category.

I am always amazed at the number of people who criticize a program that benefits our farmers and ranchers, some of whom do their speaking with their mouths full. It is truly a paradox of enormous irony: Those who enjoy the safest, most affordable food supply in the world, compliments of America's farmers and ranchers, with good intentions or not, do great harm to the very programs that support our producers in providing the bounty that is the modern miracle of American agriculture. It is time to stop. I understand the support for the programs that this amendment alleges by cutting crop insurance or using crop insurance as a bank. Let me go over those programs.

Other than the Conservation Reserve Program, the Environmental Quality Incentives Program is the most popular conservation program in Kansas. Obviously, I am for that program. Obviously, I am for reasonable funding for that program. I have been one of the strongest supporters in the Senate of the McGovern-Dole, or what we call in Kansas the Dole-McGovern, international school lunch program. In fact, I was the Senator who led efforts to get all 100 Senators serving at the time to sign a letter urging them to keep the program under the jurisdiction of the Department of Agriculture. I was the House Agriculture Committee chairman who saved the Food Stamp Program when many wanted to block grant it. The Governors wanted the money, but they didn't want to operate the Food Stamp Program. So I have a little blood pressure, if you will, and heartburn when folks try to tell me my producers don't understand or care about these programs. Just the opposite is true. I take offense at saying the

funding for these programs should be increased on the backs of our farmers and ranchers which will happen if this amendment passes.

I get frustrated when we get amendments that will inflict great harm for the simple fact that some—good intentions aside; I don't question that at all—do not truly understand how a program works, and they don't want to take the time to get their facts straight. We have already increased nutritional spending by $5.5 billion in this bill. We have increased conservation spending by, as the ranking member knows and as anybody who represents farmers and ranchers knows, $4 billion, all the while cutting $6 billion from traditional commodity programs, including $4.7 billion from crop insurance. Haven't we already extracted our pound of assistance and flesh from our farmers and ranchers? Note that I say the crop insurance program directly affects the wherewithal of farmers and ranchers. It is inseparable.

I will tell my colleagues why I think the authors of this amendment have their facts wrong, but first I want to make it clear what will happen if this amendment passes. This amendment does propose to increase the amount of quota share that companies must cede to the Government from 5 percent to no less than 15 percent. It could go higher, a lot higher. Quota share, pardon the vocabulary of agriculture program policy, is the percentage of underwriting earnings that a crop insurance company must cede back to the Federal Government. Currently that is 5 percent of earnings. Put another way, it is an additional 5-percent tax companies must pay to the Government prior to expenses being figured. In addition, if this amendment had been in place for the 2007 crop year, it would have also reduced the administrative and operating expense reimbursement to the companies by an additional 30 percent beyond what is already in the committee-passed bill. If we do the proposed changes in underwriting gains in this program, we will be ceding additional reinsurance risk from the private market, and it will go to the risk management agency of the USDA—that is the outfit that runs the crop insurance program—and the U.S. taxpayer. I don't think we want to do that.

Additionally, we will make it more expensive for companies to service the program and provide it to producers, so much more expensive and risky that it may well cause some companies to pull out of higher risk or underserved States. That is the big issue. You might want to reform it in ways that will not affect your home State where basically you get a lot of rain but don't have a lot of risk and you don't farm—the seed just comes up—as opposed to high-risk areas. That means we may have States where crop insurance would not be available or, at the very least, there may be fewer options available from which producers can purchase crop insurance. If producers can't get crop insurance, it means they will be back here asking for ad hoc disaster aid. For everybody who votes for this amendment, if it passes, I want you to help me to come back here in regard to ad hoc disaster aid. Kansas is now frozen over with yet another blizzard.

Even if we have a permanent disaster package in this bill, which we do, it also means we would be making it harder for many farmers, especially young ones, to get the operating loans and financing they need for their operation. Why would it be harder for them to get financing? It will be harder because most lenders and a good number of landlords require crop insurance as part of their business agreement. So if you take away crop insurance, you hit those young farmers who don't have a lot of equity built up in their operations.

On the other hand, I am sure there are those who say: Well, look at the GAO study on crop insurance. It is important to go over why this is a completely flawed study. Personally, if you presented it in the private business world, I think your job might be in danger. First, it takes into account none of the increases in the participation in the program that have occurred since the passage of the Agriculture Risk Protection Act of 2000, reforms to the crop insurance program that I helped lead in this body, along with our great former Senator Bob Kerrey. We worked hard, and it took us 18 months. We reformed the program. Those efforts have led to increased participation, not only in the plains States but all throughout the country, more especially in the South and for specialty crops and everybody involved in agriculture. As I said, especially in the southern region, represented by our outstanding ranking member, SAXBY CHAMBLISS, but also in regions that grow specialty crops or that have been considered underserved by the program in the past. We fixed that. This increased participation increases the ability to make profits for the companies, but it has also led to a significant increase in the amount of risk they are insuring in this program.

First, the study was ordered in the House—I am talking about the GAO study—by those who, shall we say, have been less than friendly to the crop insurance program and to our farmers and ranchers. That is probably the understatement of my remarks. Second, the GAO study, I believe, is counterproductive because everyone here knows you can get a GAO study to say whatever you want. I have been committee chairman three times. You ask the questions right, they respond with the answers you want. This GAO study claims that crop insurance companies are making huge amounts of money—we just heard that from previous speakers—and are much more successful than traditional property and casualty insurance companies. The first flaw in this study is that they pretty much compared apples and oranges. When looking at the business relationships between crop insurance and traditional property and casualty companies, they compared a 5-year period for the crop insurance program that represented what happens to be 5 of the lowest crop loss years nationally in the history of the program. At the same time they included a time period for looking at the business numbers of the property and casualty industry that included both the 9/11 attacks and Katrina—in other words, one of the worst 5-year business periods in the history of the traditional property and casualty business. If you take a comparison that shows one of the best 5-year periods in history in terms of insured losses for one sector of the industry and you take one of the worst 5-year periods for another sector of the industry, what do you think the numbers are going to look like?

Additionally, this GAO report claims that the companies are making substantial underwriting gains on the premiums they collect which the GAO then assumes is all complete profit. That is one of the arguments that has just been made. Yes, companies do make underwriting gains on a portion of their premium that is collected, if there are not losses. That is the factor that has not been brought up. What the GAO fails to mention is that were a major loss to occur this year—i.e., the 1988 drought, what we have been through in Kansas, or the 1993 flood—the companies would also be responsible for these underwriting losses.

In addition, the GAO report makes the assumption that any underwriting gains by the companies are pure profit. This is ridiculous. There are expenses that are paid out of those underwriting gains. The largest of these expenses is for costs to pay private reinsurance companies for the amount of risk they underwrite for the insurance companies.

Let me explain this in plain English. It is called ''show me'' in Missouri. All lines of insurance, as the Presiding Officer knows, protect their investments by insuring their own risk with private reinsurers. That is the way it is done. Crop insurance companies do the same thing. If they did not do it, again, the risk management agency of the USDA and U.S. taxpayers would have to act as the reinsurers for the program, thus greatly increasing the risk for additional cost for taxpayers. We don't want to go down that road. So if you subtract this and other expenses to obtain net underwriting gains, which the GAO did not do, the numbers look a heck of a lot different.

In addition, the private reinsurance industry has serious concerns with the proposed increase in quota share from 5 percent to a minimum of 15 percent that, again, must be ceded back to the Federal Government. Again, in simple terms, this requirement will force companies to cede an additional minimum of 10 percent of underwriting gains—

prior to expenses even being calculated—back to the Federal Government.

Now, the authors of this amendment and the USDA call it a quota share. I simply call it a tax because that is what it is when you force any company to provide an additional 10 percent or more of their earnings to the Federal Government.

Private reinsurers know the crop insurance business can be very risky. Yes, you can have several profitable years if you do not have widespread weather problems. But if you have a major crop loss across a broad area of the Nation—and I can tell you that has happened again and again and again.

I see Senator CONRAD over there on the other side of the aisle. Senator CONRAD, for Lord knows how many years, had to undergo all sorts of bad weather, all sorts of weather-related tragedies. He had the famous chart of the famous cow named Bossy, that was, unfortunately, legs up and had undergone a rather tragic experience. I kept saying to the Senator: My Lord, I cannot understand this. You have had floods, you have had blizzards, you have had drought. I even told him one time: You ought to move.

That is not an answer.

If you have a major crop loss across a broad area of the Nation—more especially in high-risk Plains States, where we do produce, by the way, in Kansas 350 million bushels of wheat every year or 400 million; that is the other side of the thing in regards to what we actually contribute to the country—why then, if you are in the crop insurance business, you could have a substantial loss in the program, and some have.

Now, reinsurers worry that the increased quota share, or the tax, will make it harder for companies to meet the expense of this insurance and will make them more susceptible to losses. Thus, some reinsurers may pull out of doing business with the crop insurers.

If private reinsurers pull out of crop insurance, then under the terms of the Standard Reinsurance Agreement between the companies and RMA, additional risk will be shifted to the U.S. taxpayer. It is as simple as that.

In addition to the quota share, the reduced administrative and operating expense reimbursement—yet another reduction—will increase company costs. The average A&O reimbursement—again, the administrative and operating expense is currently 20 percent. We have several studies that have indicated the actual cost for the companies of administering the program is around 26.5 percent.

The PRESIDING OFFICER (Ms. KLOBUCHAR). The Senator's time has expired.

Mr. ROBERTS. Madam President, I ask for 3 additional minutes.

The PRESIDING OFFICER. Is there objection?

Mr. CHAMBLISS. Madam President, could we have unanimous consent that we get 3 additional minutes on both sides?

Mr. CONRAD. Madam President, there would be no objection on our side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAMBLISS. The Senator shall have 3 additional minutes.

Mr. ROBERTS. I thank the Senator.

Yet this amendment proposes taking that reimbursement down even further.

These companies are businesses. Like any good business, if you make the risk too high or increase the costs too much, you will leave the business. Now please listen to this: There are only 16 companies now participating in the crop insurance program today—16. When I first had the privilege of serving in the House of Representatives and serving on the Agriculture Committee, 20 years ago, the number was 60. It went from 60 to 16. If this amendment is adopted, I do not know where it is going. Some companies will not serve certain sections of the country.

Perhaps it is not as profitable as some might claim? If this amendment is adopted, there may well be entire regions of the country where companies will simply no longer provide this service.

If you add additional costs, I think there is a very real risk that the companies will either leave the business completely or at the very least begin to pull out of higher risk States and also those States that are classified as ''underserved'' by the Department of Agriculture.

Bottom line: If you are a Senator representing a higher risk State or specialty crops, I would be very nervous about the impact this amendment could have on producers being able to get adequate crop insurance service in your State.

For those who think companies would not pull out, I would remind you that under the operating contract the companies sign with the Government, they are not required to sell in all States. They can pick which States they do business in.

I know some are going to say: Well, OK, but then why are we doing these A&O expense reimbursements when traditional property and casualty companies do not get them?

That is a question with an easy answer. In the traditional property and casualty business, companies are not required to do business with you or me. If they do so choose to do business with us, they get to determine the rates they should be charging on their policies. They get to load expenses into those rates. And they can require us to pay premiums upfront, premiums that can be reinvested and build the economy.

Crop insurance is different. Similar to the property and casualty business, crop insurance companies do not have to do business in all States. But once they decide to do business in a State, they have to do business with any producer who wants to work with them. They are not allowed to cherry-pick.

Crop insurance companies do not set their rates. They are all calculated and established by the Risk Management Agency. In addition, producers do not pay their premiums upfront. Depending on the crop they raise, and changes in this underlying bill, they will either pay their premiums within 30 days after harvest or by September 30 of each year. So the companies float the cost of doing business until these premiums come in. What if a producer fails to pay their premium? The company is responsible.

Now, that is a major concern. Out in western Kansas, where we went through 5 consecutive years of drought, in some places a lot of producers and their lenders have told me if it was not for crop insurance and direct payments, they would not still be in business, especially our young producers and small banks.

If you adopt this amendment, you are not punishing the crop insurance companies, you are punishing all the producers and farm families out there who are operating on the margins, while providing this country with the most affordable and safe food supply in the world.

I urge my colleagues to vote against this amendment that I truly believe would kill crop insurance for our young farmers and ranchers.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. BROWN. Madam President, how much time do I have?

The PRESIDING OFFICER. The Senator from Ohio has 21 minutes; and there is 13 minutes in opposition.

Mr. CONRAD. Madam President, might I ask unanimous consent by both sides to make a unanimous consent request at this time on behalf of the leadership of both sides?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CONRAD. Madam President, I ask unanimous consent, on behalf of the combined leadership, that the Senate stand in recess today from 2 to 3 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Georgia.

Mr. CHAMBLISS. Madam President, there was an understanding that Senator GRASSLEY would be recognized for up to 5 minutes following Senator ROBERTS.

Mr. BROWN. Madam President, I reserve my right to object. Rather than have three or four speeches in a row in support of this amendment, I would like to—particularly since I have more time remaining—at least use a couple minutes now. I will not give a long speech, but I would like to use a couple minutes responding to Senator ROBERTS and then go back and forth, if that would be acceptable to the Senator from Iowa, or if the Senator from Iowa has somewhere to go, I am fine with him speaking now. But I would like to speak afterwards.

Mr. GRASSLEY. Madam President, I would like to speak for 5 minutes.

Mr. BROWN. Madam President, I am fine with that. I would like to be recognized after Senator GRASSLEY, if that is OK with the Senator from Georgia.

Mr. CHAMBLISS. The Senator is correct. The normal procedure would be to go back and forth. After Senator GRASSLEY, Senator BROWN will be recognized, and then I ask that Senator CONRAD be recognized after Senator BROWN.

Mr. BROWN. I thank the Senator. I certainly will reserve my time.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Madam President, it would be easy to say I associate myself with the remarks of the Senator from Kansas and let it be that way. But I was around when we set up the Federal crop insurance program. I wish to reflect on the rationale behind it and then, consequently, why I am going to vote against Senator BROWN's amendment.

Remember, for decades of a farm program, we may have had some crop insurance through the Government—and for hail through the private sector—that farmers could buy for some protection, but, for the most part, against natural disasters people relied upon the political whims of Congress to vote for or not to vote for disaster aid.

So this crop insurance program was put in place to give farmers the ability to manage their risk, let the individual farmer make some determinations so he can take risks out of farming, out of the natural disasters that are connected with it—even now, you can take some of the price questions out that are involved with it—and manage his own risk as opposed to relying upon the Senators and the Congressmen to vote or not to vote or when to vote for disaster relief.

So we put this in place. In order for it to be successful, you have to have a network to carry it out. This network is a private-sector network. I think it is working very well. I think it is in jeopardy if the Brown amendment is adopted.

So I have some concerns about the amendment. It could have some very detrimental impacts on the crop insurance program that is so valuable to rural America. So I urge my colleagues to oppose this amendment because I do not believe the amendment is reform. It moves us back to a time when there was more of a reliance upon the political whims of Washington to devote disaster relief.

The amendment seeks to further cut support of the Federal crop insurance program by several billion dollars simply to fund other projects. Additional cuts beyond what the Agriculture Committee has already adopted will prevent the program from providing assistance to America's farmers that is so vital to risk management.

Over the years, Congress has insisted on having the Federal crop insurance program reach out to all farmers, especially small, beginning, and limited-recourse farmers. This is to be done in a fair, equitable, and nondiscriminatory manner, serving as an effective risk-management tool that all can use.

According to the Department of Agriculture, the program is succeeding at this objective. Additionally, crop insurance has become essential to many farmers in securing credit from a bank, rental agreements, as well as providing confidence to more effectively market their crops through the futures market where they can capture higher prices.

The farmers in my State and across the country have used this tool over and over. It must be effective or they would not be using it and paying the premiums each year.

The Senate Agriculture Committee reported a farm bill that contained a two-point cut to the administrative and operating reimbursement, a cut that represents nearly $750 million in reduced program cost. Any cuts to the A&O reimbursement rate beyond those two points that were agreed upon by the committee will likely undermine the program by threatening the service America's farmers both need and deserve.

Further cuts could also jeopardize the continued viability of the private delivery system that is vital to the program's success. This could put private-sector employees out of work and result in the hiring of new Federal employees to serve farmers. Private-sector delivery is efficient and results in good services.

Approximately 30,000 jobs are created by this industry. Those would be in jeopardy, and we would not have small farmers and ranchers serviced the way they are now.

Further, the amendment's proposal to increase the quota share could weaken the crop insurance program and may result in private insurers exiting the program.

In fact, increasing the quota share is counter to the Federal policy of the past 25 years, which successfully has shifted more risk to the private sector for two primary reasons. First, private companies do a better job at loss adjustment. Both the Inspector General and the GAO have repeatedly focused on that point. Second, by shifting more risk to the private sector, Federal costs should be lower over time, as companies have more financial responsibility for indemnities.

It has taken more than 25 years, and we do not want to lose that 25 years.

As a matter of transparency, I wish to tell everybody in the Senate that I participate in a crop insurance program. My constituents ought to know it, and my colleagues voting on it ought to know that as well.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN. Madam President, I thank the Senator from Iowa for adding his knowledge to this debate.

After listening to the Senator from Kansas, I think we might think the sky is falling in Kansas or in Ohio or in Iowa or in Georgia, that the sky is falling on the crop insurance companies.

But when I hear the opponents of this amendment say crop insurance companies may go out of business because of this amendment, or a new argument today, that the reinsurer might go out of business—reinsurance companies that insure the crop insurers—I think you should, again, look at this chart.

On this chart is shown the number of dollars per policy that the crop insurance companies are paid. In the last 10 years, it slowly went up, until about 2004. So a crop insurance company writing a policy would get $591, 4 years ago. They would get this A&O subsidy, this administrative and operating subsidy. Then it went to $700, stayed around $700. Then it went up to $800 in 2006, the highest number in crop insurance program history. Then, this year, it is close to $1,200 per policy of the subsidy. In addition to everything else with crop insurance, we don't need to get into the inner machinations of the subsidies in other ways. But this over-the-top subsidy—I have been very involved in Medicare issues. Medicare is about 2 percent of administrative costs that the Government pays them to operate the Medicare Programs in the 50 States. I don't make the comparison, generally, because it is a very different program. But we give them $1,100 for every policy they write—almost $1,200. Our amendment simply says: Let's go back to the last record-setting year, which is $830 per policy.

So for Senator ROBERTS to claim they may go out of business—all we are doing is going back to the very profitable year they had when they were getting $830. This is all taxpayer dollars. These are private insurance companies making huge profits—making huge profits from our tax dollars. Again, I go back to the profit levels of these Federal crop insurance companies. These are private companies getting financing profits from taxpayers—twice the profits of the average private insurance property and casualty companies.

Then I hear my friend from Kansas, Senator ROBERTS, talk about how business is going to be bad for farmers. Understand, no premium increase. This amendment increases no premiums; it doesn't touch premiums for farmers. But then he makes the case that—he does the oldest trick in the book, making the farmers' interests coincident with the insurance company interests. If you buy car insurance as a driver, you don't think your interests are always the same as the car insurance companies. When you get your health insurance plan, you don't think your interests are exactly identical with your health insurer. So to believe our taking some of the oversubsidized profits—taxpayer dollars—from the private crop insurance companies, that that means we are going after the farmers or that is going to hurt the farmers simply doesn't pass the straight-face test, and here is why.

We spent, if you recall from my earlier comments, $10 billion in subsidies in the last few years which go to the farmers for crop insurance—a $10 billion benefit for farmers, but it took $19 billion of taxpayer dollars to get them those $10 billion. So in other words, a majority of crop insurance spending, this spending is taxpayer dollars. A majority of crop insurance spending goes to insurers, not the farmers. The farmers and the insurance companies don't have identical interests. I am very supportive of family farmers in my State. Most of the agriculture in my State is corn and soybeans. Most of the crop insurance premium dollars are insuring corn and soybeans in this country. Some 75 percent, if I recall, of crop insurance is about corn and soybeans. I am very supportive of those farmers. I will continue to be. I don't want to see taxpayers, whether they are taxpayers in rural Lexington, OH, or whether they are taxpayers in more urban Youngstown, OH, I don't want to see them giving all of these subsidies to insurance companies.

Again, more than half the spending on crop insurance—more than half the spending—goes to the crop insurance companies, not the farmers. We are not touching the 46 percent that goes to farmers. We are not touching those dollars. We don't want those premiums to increase. We are saying, take a little bit away from the crop insurance companies. Go back to their 2006 levels of $830 per policy. They had huge profits in 2006. The crop insurance companies were thriving. The farmers were benefiting from these programs. Why give them the extra $342 per policy when that money could go to programs such as conservation for farmers; EQIP—an important program in Kansas—or go to McGovern-Dole or go to hundreds of millions of dollars in deficit reduction.

So we are taking those taxpayers' dollars, giving them to these private insurance companies so their profits can absolutely go through the roof. Instead, I want those dollars to be used wisely. We are stewards of taxpayer dollars, as my farmers are stewards of their land. I want to support the farmers. I want to support the conservation programs. I want to support the feeding programs. I want to help reduce the Federal deficit. That is why the Brown-Sununu-McCaskill amendment makes so much sense.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Georgia is recognized.

Mr. CHAMBLISS. I yield 10 minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator has only 7½ minutes left.

Mr. CHAMBLISS. Did that include the additional 3 minutes we got?

The PRESIDING OFFICER. Yes.

Mr. CHAMBLISS. I ask unanimous consent for an additional 5 minutes for both sides.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from North Dakota is recognized.

Mr. CONRAD. Madam President, I rise to address the amendment of Senator BROWN, the Senator from Ohio, proposing further cuts to crop insurance.

First, I wish to acknowledge what a valuable Member Senator BROWN is of the Senate Agriculture Committee. He has made a real contribution to the work of the committee in bringing this bill to the floor. I respect him for this amendment. He has offered this amendment because he thinks we need to beef up other parts of the farm program—nutrition and conservation—and at the same time he thinks there is more money going to the crop insurance industry than is warranted.

Let me give an alternative view. The amendment before us would cut crop insurance by another $1.8 billion, in addition to the substantial reductions that have already been made in the committee bill. I would like to caution my colleagues about making even more cuts to crop insurance. As the bill stands now, we have already taken $3.6 billion over 5 years, $4.7 billion over 10 years from crop insurance to address other priorities in the bill. This amendment would increase those cuts by more than 50 percent. It would go well beyond what the House did, and it could have a very negative effect on producers' ability to insure their crops.

Let's look at the reforms already contained in the committee bill. The committee bill reduces the loss ratio from 1.075 to 1; it reduces catastrophic insurance and noninsurable—or it has fee increases for catastrophic insurance and the noninsurable program; it has reduced reimbursement for area plans; it has a 2-percent reduction for administrative and operating expenses; and it has total crop revenue offsets of $3.6 billion. That is not insignificant in terms of savings out of this program.

When I look at the proposals of this amendment, I am concerned about the unintended consequences. Specifically, if we act hastily and unwisely without benefit of hearings in the committees of jurisdiction, we could lose participation of private insurance companies, smaller crop insurance companies that rely on reinsurance could exit the business, and producers would have fewer choices. Rather than having competing companies delivering a product, we would be begging them to stick around.

The loss of participating insurance companies is only one part of the story. Reduced reimbursement for delivery of the program would result in agents abandoning the program as well. Where and how far will our producers have to travel to obtain coverage? I don't particularly like the prospect of farmers and ranchers calling my office telling me their agent has quit and they can't find someone to explain to them crop insurance. I think that might be the outcome if we adopt this amendment.

Proponents have been quoting the GAO's May report as justification for further reductions. I read the report. I also read a report completed by the respected accounting firm of Grant Thornton. Frankly, I am concerned that when GAO made its comparisons of crop insurance profitability to property and casualty insurers, they were comparing apples and oranges.

The GAO compared profitability over 5 years, showing crop insurance at 17.8 percent return compared to 6.4 percent for property and casualty. Of course, that comparison included the only loss year for property and casualty and relatively good years for multiperil crop insurance. Grant Thornton instead looked at a 14-year period. Their analysis shows something quite different, with crop insurance profitability at 12.2 percent compared to 17.4 percent for property and casualty. Further, Grant Thornton notes that crop insurance expenses have fallen short of administrative and operating reimbursements since 1997. That is quite a different story.

Grant Thornton's report suggests the GAO didn't make fair comparisons because they chose nonrepresentative years and did not account for significant differences between property and casualty insurance and crop insurance. Frankly, there is a dramatic difference between crop insurance and what is required in order to provide it and other insurance products. There are more administrative expenses to administer a crop insurance program than most of us understand. Agents are constantly being trained and retrained to keep up with the new Government rules we pass. They need to understand not only government regulations but company rules, loss adjustment, and maintain production history records.

In addition, loss adjustments occur on a much greater frequency than for any property and casualty company. I have actually had perhaps the misfortune of studying insurance in college. Crop insurance is a totally different insurance coverage than other insurances that have been referenced on the floor. It is no wonder Grant Thornton reported crop insurance expenses have exceeded administrative and operating reimbursement every year since 1997. I might add, while the GAO outlined what they believe are vulnerabilities for fraud, waste, and abuse, this amendment doesn't do anything about those questions. In fact, because it reduces available resources for administration, I am inclined to think this proposal may make the fraud and abuse situation worse.

While I applaud my colleagues for trying to increase resources for conservation and nutrition, I would point out the bill before us increased conservation by over $4 billion above the baseline, increased nutrition by $5 billion above the baseline, and we did it largely by taking money from crop insurance already. This is a double hit.

We have taken nearly $7.5 billion from the commodity programs. We have taken $4.2 billion directly from

commodities, and over $3.6 billion from risk management. Where did the money go? The money went to nutrition and conservation. They were the big winners. It is like people have completely forgotten what occurred.

This is a chart that shows the sources and uses of funds. Thirty-four percent of the money—the new money—provided in this bill came out of commodities. Thirty-two percent—almost a third—came out of crop insurance. We have already tapped them. Where did the money go? Forty percent of it went to conservation, and 47 percent went to nutrition. Now, when is enough enough? When is there a fair balance?

I wish to emphasize, we have hit the commodity title for $7 billion already. When does it stop? When is enough enough? When is fair fair? Sixty-six percent of this bill is going to nutrition. Sixty-six percent of this bill is going to nutrition. Nine percent of this bill is going to conservation.

Commodity programs are less than 14 percent. Let's be clear. When we wrote the last farm bill, it was estimated that three-quarters of 1 percent of Federal spending would go to commodity programs. But that isn't what happened in the real world. We didn't get three-quarters of 1 percent of Federal spending; we got one-half of 1 percent of Federal spending in the current farm bill for commodities. You know how much we are going to get in this farm bill? Not three-quarters of 1 percent, not one-half of 1 percent, but one-quarter of 1 percent. That is what is going to go for commodities in this bill.

This amendment says let's take another $1.8 billion and give it to the parts of the bill that have already been the big beneficiaries, the part of the bill that already has had the biggest increases—conservation that got 40 percent of the new money, nutrition that got 47 percent of the new money.

This amendment ought to be defeated. There are questions raised by it that are legitimate and they ought to be the focus of a hearing. The House already agreed to do so. The Senate ought to follow suit, but we ought not to make a rash, hasty decision that can endanger crop insurance, which is critically important for our producers.

I yield the floor.

The PRESIDING OFFICER (Mr. WHITEHOUSE). Who yields time?

The Senator from Ohio is recognized.

Mr. BROWN. Mr. President, will the Chair let us know how much time remains on each side?

The PRESIDING OFFICER. The Senator from Ohio has 17½ minutes, and the Republican side has 2 minutes.

Mr. BROWN. I thank the Chair.

Will Senator ROBERTS take his last 2 minutes?

Mr. CHAMBLISS. I am sorry, what is the question?

Mr. BROWN. I have a good bit of time left. You have a couple of minutes. I want to close, but I want to make some comments first.

Mr. CHAMBLISS. The Senator can talk and we will take our 2, and then he can close.

Mr. BROWN. I thank the Senator. I think we should wrap this up.

I appreciate the comments of my friend from North Dakota, who has fought more effectively and passionately for his farmers in North Dakota than perhaps anybody in the Senate. But this debate is not about how much money has gone to conservation, to nutrition, or in or out of direct payments. This amendment is the subsidies, the taxpayer dollars, that go directly into crop insurance, the huge, bloated subsidies, the taxpayer dollars, that go to these companies that, by any measurement, are the most profitable insurance companies in America—Federal crop insurance, with 17.8 percent profits; and private property and casualty insurance, with 8.3 percent.

I know crop insurance is different; they have Federal rules. But in the end, this profit is all about taxpayer subsidy. This is the same kind of profit that a private property and casualty insurance company has. It is taxpayer dollars from taxpayers in Providence, RI; Topeka, KS; Columbus, GA; and Mansfield, OH.

I heard Senator CONRAD's discussion of a Grant Thornton analysis over the last dozen or so years. I don't know who paid for that study. It doesn't matter. I know who paid for the GAO study, and I know about the professionalism, even though called into question by my friend from Kansas, when the audits don't come out the way some people want them to. I know about their professionalism and what they said about crop insurance, and I know what they said about overpayments and profitability.

Most importantly, that study from Grant Thornton looks over a period of many years. I probably would not have offered this amendment in 1999, 2000, 2001, or 2002. But look at where we are today. Look at the subsidies we provide to crop insurance from taxpayer dollars. I repeat that these are taxpayer dollars, the subsidies to these crop insurance companies: $723, $696, $830 per policy with the subsidy, leading up to this year, when the policy jumps to a $1,172 subsidy.

All we are saying is to take this huge overpayment from this year and go back to the already very profitable year in 2006. This is not a debate about what farmers get. Farmers' premiums don't increase. They will get the same services. Farmers will still have the same access, in spite of what some people say, to these crop insurance policies. So it is a matter of whose side you are on. Are you on the side of the farmers or the taxpayers and the side of conservation and nutrition? Or are you on the side of a very small number of crop insurance companies that are reaping huge profits, getting huge subsidies, getting bloated numbers of dollars from taxpayers in their pockets? Whose side will you be on? We should be on the side of the family farmers and taxpayers.

I reserve the remainder of my time, and I will close after Senator CHAMBLISS uses his last couple of minutes.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. CHAMBLISS. Mr. President, crop insurance has experienced tremendous growth and success since the enactment of the 2000 crop insurance bill, which increased premium subsidies to producers and made other program improvements. In my State of Georgia, we were not a big user of crop insurance in years past. In 1994, only 38 percent of eligible acres were insured; whereby, in 2006, 89 percent of eligible acres were insured. This is a valuable tool that our farmers now have available to them, and it saves the taxpayers money by decreasing the amount of annual emergency disaster programs we have to come and ask for relative to agriculture.

In the committee-approved farm bill, over $4.7 billion has been taken out of the crop insurance program to fund other farm bill priorities. These savings were achieved to answer criticisms of the program, some of which were raised by Senator BROWN, and are directed to improve operational efficiency. We have tried to manage these funding reductions in a way that will not unduly harm the program or the delivery system.

Twenty-one agricultural organizations have sent a letter opposing the Brown amendment. I ask unanimous consent that that letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DECEMBER 12, 2007.

Hon. SAXBY CHAMBLISS,
U.S. Senate,
Washington, DC.

DEAR SENATOR CHAMBLISS: We urge you to vote ''no'' on the Brown-Sununu-McCaskill amendment that is said to ''reform'' the federal crop insurance program.

The Senate Agriculture Committee has already carefully considered the crop insurance program and adopted manageable changes that reduce costs and improve efficiency while capturing nearly $4 billion in savings to fund other farm bill priorities.

The public-private partnership responsible for managing and implementing the program has responded very well over the years to Congress' desire to have a federal crop insurance program that reaches out to farmers across the nation, especially small, beginning and limited-resource farmers, in a fair, equitable and non-discriminatory manner to provide effective risk management. There is very tangible evidence the program is achieving this objective. For example, farmer risk protection is projected to reach at least $65 billion in 2007, providing protection to more than 80 percent of the insurable acreage.

With this magnitude of expansion, crop insurance has become essential not only for individual farmer risk management, but also, in many cases, to borrow money or rent land. Without a crop insurance safety net that is fairly and effectively available, many family farms will not be able to rent land and obtain credit to produce a crop. Furthermore,

the crop insurance program helps farmers have the confidence to more effectively market their crops through the futures market where they can capture higher prices and increase their annual income.

We are concerned the changes that would be made to the crop insurance program by the Brown amendment have not been thoroughly and effectively analyzed by the Agriculture Committee and will cause unintended harm to the availability and delivery of a vital farm security program.

To protect what it has taken Congress more than 25 years to build, we urge you to vote ''no'' on the Brown amendment.

Sincerely,

American Soybean Association.
American Sugar Alliance.
Corn Producers Association of Texas.
Minnesota Corn Growers Association.
National Association of Wheat Growers.
National Barley Growers Association.
National Cotton Council.
National Farmers Union.
National Sorghum Producers.
National Sunflower Association.
New Mexico Peanut Growers Association.
North Carolina Peanut Growers Association.
Oklahoma Peanut Commission.
Peanut Growers Cooperative Marketing Association.
Southwest Council of Agribusiness.
USA Dry Pea & Lentil Council.
USA Rice Federation.
US Canola Association.
US Rice Producers Association.
Virginia Peanut Growers Association.
Western Peanut Growers.

Mr. CHAMBLISS. Mr. President, these organizations recognize the importance of a solid crop insurance program, and in the letter they state:

> Without a crop insurance safety net that is fairly and effectively available, many family farms will not be able to rent land and obtain credit to produce a crop.

They express concern that changes proposed by Senator BROWN will cause unintended harm to the availability and delivery of this vital farm security program.

With that, I urge a vote against the Brown amendment.

I yield back our remaining time.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. BROWN. Mr. President, I will not use all my time. I have a couple of points. Several of the speakers have said that the committee already made substantial cuts in crop insurance subsidies from the Government. That is not quite true. There was a bit of a cut, but the cuts were much less than the House of Representatives had in their bill. The House made cuts in the shared risk and the A&O, the administration and operating expenses. They say the crop insurance companies were already cut by $3.5 billion. The vast majority of these savings were due to the sleight of hand, the shifts in time. The CBO cost estimate indicates that only $700 million were actually cut.

According to the CBO, the supplemental disaster package adds an additional $2.1 billion to crop insurance. So they took a little here and added more there. It adds up to a net gain of $1.5 billion to crop insurance companies. Their lobby is strong and they are doing well. They have a lot of influence on this body. But the fact is, in the end, this is about one thing: This chart shows that the majority of crop insurance spending goes to insurers, not family farmers or large farmers—not to farmers, period. A majority of this money—the underwriting gains paid to companies was $840 million. Administrative subsidies paid to companies was $960 million. Fifty percent of crop insurance spending goes to crop insurance companies, not to farmers.

About $10.5 billion in the last 7 years has gone to farmers benefiting from the crop insurance program, but it took $19 billion from taxpayers to pay them that $10 billion. What kind of program is that? We get $10 billion in public benefits, but it takes $19 billion to provide those public benefits. No other Federal program does it that way. If it were Medicare, we would bring them in here and have hearings and destroy them if they were spending that much of the services they are supposed to provide, with that much in administrative costs. Again, over 50 percent—more than half—of crop insurance spending goes to insurers, not farmers.

The Brown-Sununu-McCaskill amendment will do what we need to do. It will say no more bloated, oversubsidized spending, no more taxpayer dollars of this magnitude will go to the crop insurance companies. Let's use that money for nutrition, for conservation—and, again, don't forget, hundreds of millions of dollars from the Brown-Sununu-McCaskill amendment will go to reduce the national debt. Taxpayers save, family farmers are better off, and the natural resources in this country—something Senator HARKIN has worked so effectively on for so many years—will make all of the difference in this. I ask my colleagues to vote for the Brown-Sununu-McCaskill amendment.

I yield the floor.

Mr. HARKIN. How much time remains?

The PRESIDING OFFICER. There is 10 minutes.

Mr. BROWN. Mr. President, I will yield whatever time I have left to Senator HARKIN.

Mr. HARKIN. Mr. President, I take a back seat to no one in my support for the crop insurance industry. I was here, as Senator GRASSLEY said, on the House Agriculture Committee when we set up this system. I was on the Conservation and Credit Subcommittee. I remember why we did this. We had a bad system before, with the Government putting these policies out, relying upon ad hoc disaster payments. Eventually, we went to all crop insurance delivered through the private sector. I was one of the initial supporters of that. I fought very hard for the private sector to get this business, for obvious reasons. No. 1, we had our private companies out there already insuring houses, cars, and different things, such as equipment, for farmers. Why should they not also provide crop insurance? It made logical sense.

I think the years have proven us right. The private crop insurance industry in America has worked well. It has done an outstanding job. It has met all of the things we expected them to do when we created this program in 1982. So I have followed this all these years, and I have supported this industry and what they have been doing all these years. I still do. I take a back seat to no one.

I will be frank; when the Senator from Ohio first came up with his proposal on crop insurance in my discussions with him, I thought this was too big of a cut. I thought it was a little bit too heavy. I thought they were too harsh. But I do think that over the weeks, in working with Senator BROWN and in moderating the size of the cuts and to shape the message about what needs to be done to reform the financial incentives provided to crop insurance companies, I think he is on the right path. I think the Senator from Ohio makes valid points about the problems with the current mechanism for reimbursing private crop insurance companies for the expenses they incur in delivering the Federal crop insurance program for farmers.

No one who is knowledgeable about how the program works—and I believe I am very knowledgeable about it—can deny that the significant increase in total premiums over the last few years has been driven by the increase in commodity prices, especially corn, wheat, and soybeans, which has resulted in an increase in A&O reimbursement per policy. That surge generated higher revenues for the companies that have not necessarily had an increase in expenses over the same period.

So we have had a system whereby the reimbursements are tied to commodity prices. Well, we have seen this huge increase in commodity prices in the last few years. In fact, I penciled out here that we went from about $3.5 billion to more than $5 billion in just a few years.

The insurance companies get, as we know, 21 percent of that amount. That is the reimbursement rate, 21 percent. That is a huge increase. The Senator from Ohio pointed out on his chart the increases in those years.

What the Senator is proposing is that we take the average of, I believe, it is 2004, 2005, and 2006, and we cap it at that level. It does not apply to the crop-year of 2007, and it would not apply to 2008, if I am not mistaken. I think it starts in 2009. It does not apply to 2007 or 2008. It does not start until 2009.

I have told some of my friends in this industry that I think this approach may be better for them in the long run to base it on those levels rather than to roll the dice. We have seen crop prices go up, and we have seen them go down. Obviously, I would like to see them stay up. But that is ignoring history.

I said to my friends in the industry: Look, this is not a bad deal. We cap the highest levels we have seen, except for

this year, obviously, for 2007, and that is the reimbursement rate. I think it might in the long run be better for them.

I don't see this as onerous on crop insurance. Some say there is going to be this big cut, but that does not apply to 2007 and 2008. By the time we get to 2009, there may not be any cuts at all, as a matter of fact, depending upon what happens with prices. In fact, it may be better. It actually may be better.

In exchange, what we do get is some more money for conservation, for EQIP. We need more money in the EQIP program, the Grasslands Reserve Program, the Farmland Protection Program, as well as the McGovern-Dole Food for Education Program. I think it is a pretty fair tradeoff. If I thought for 1 minute this was going to devastate, destroy, unduly harm the crop insurance industry, I could not support it. But I believe it is a fair and equitable approach and, quite frankly, I think the methodology is much better in the long term. ''Long term,'' what do I mean? Five years? Probably 5, 7, 8 years. It may be better for the crop insurance industry than hooking onto commodity prices.

Quite frankly, thinking back over the years, I find it hard to argue why it should be connected to commodity prices. What does that have to do with reimbursement? What does that have to do with policy numbers? We should have something that will protect our insurance people from undue happenings and events such as that, and I think that is what this methodology does. We took the average of those 3 years and capped it at that. In conference, we can look at putting in an inflation factor.

It seems to me that makes much more sense for the future of the program. As I said, for that we get more money for the conservation programs, the McGovern-Dole International School Lunch Program, and it also lifts the sunset provision on our nutrition program. Right now the increases we put in the Food Stamp Program with the standard deduction and minimum benefit sunset in 5 years.

Someone in the Democratic Caucus said recently to me: Why are we sunsetting in 5 years the programs that go to the poorest people in our country, yet we don't sunset the programs that go to some of the wealthiest people in our country? Fair question. So in order to lift this sunset, we need additional money, and the money we would save would go to lift the sunset provisions on both the standard deduction and the minimum benefit.

For those reasons, I support the amendment.

Mr. President, I yield the floor.

Mr. BROWN. Mr. President, I yield back our time on the amendment. I thank the Senator from Iowa.

Mr. ROBERTS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BROWN). Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I ask unanimous consent that at 3 p.m. today, the Senate proceed to conclude the debate with respect to the Klobuchar amendment No. 3810, and that the previous order with respect to the vote threshold remain in effect; that upon the use or yielding back of time, the Senate proceed to vote in relation to the Klobuchar amendment; that upon disposition of that amendment, the Senate then vote in the relation to the amendments listed below in the order listed; that there be 2 minutes of debate equally divided and controlled prior to each vote; that after the first vote, the vote time be limited to 10 minutes; with no second-degree amendment in order to any of the amendments covered under this amendment, prior to the vote; that the amendments covered here be subject to a 60-vote threshold; that if any of these amendments achieve an affirmative 60 votes, it be agreed to and the motion to reconsider be laid upon the table; that if it does not achieve that threshold, it be withdrawn: Coburn amendment No. 3530; Tester amendment No. 3666; Brown amendment No. 3819, and that the managers' package of cleared amendments be considered and agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I guess we are going to be in recess for an hour, from 2 to 3 p.m. We will come back at 3 p.m. and finish debate on the Klobuchar amendment. We will have that vote, and at the conclusion of that time, we will have three other votes. There should be four votes in sequence at that time.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 3 p.m.

Thereupon, the Senate, at 1:55 p.m., recessed until 3 p.m. and reassembled when called to order by the Presiding Officer (Mrs. MCCASKILL).

FARM, NUTRITION, AND BIOENERGY ACT OF 2007—Continued

AMENDMENT NO. 3810

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of amendment No. 3810.

Who yields time? The Senator from Minnesota.

Ms. KLOBUCHAR. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Without objection, the time will be equally divided between the two sides.

The legislative clerk proceeded to call the roll.

Ms. KLOBUCHAR. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. KLOBUCHAR. Madam President, I am here to address my amendment, No. 3810, and I want to talk about the importance of reform to this farm bill.

I was disappointed today when the amendment of Senator DORGAN and Senator GRASSLEY was defeated. It was a very important amendment. In other years, we actually had enough votes for this amendment, before I was here, but we weren't able to muster the votes necessary to block the filibuster. Well, we have one more opportunity, and that opportunity is this afternoon.

America's farm safety net was created during the Great Depression as an essential reform to help support rural communities and protect struggling family farms from the financial shocks of volatile weather and volatile prices. I believe after 75 years, the reasons for that safety net still exist, and I believe the farm bill that came through our committee has some very good things in it. It is forward thinking; it is about cellulosic ethanol. It is about finally having some permanent disaster relief. It is about a strong safety net for America's farmers. But there is one thing missing from this farm bill, Madam President, and that is the kind of reform that we need to move forward.

I want to demonstrate what we are talking about here with our amendment, which is cosponsored with Senator DURBIN and Senator BROWN, and why I think it is so important to this bill. As you know, I come from a farm State. It is sixth in the country for agriculture. I am proud of the work our State does and our farmers, and we have diverse farming. I know some of the farmers in my State may not like this, but the vast majority of them support this reform because they know if we don't reform ourselves, someone else will do it for us.

What I am talking about is farm subsidies going to people who shouldn't have them, such as Maurice Wilder, who is a guy that is very wealthy, and who was the No. 1 recipient of commodity payments from 2003 to 2005. He has collected more than $3.2 million in farm payments for properties in five States, even though his net worth is more than $500 million. We also have $3.1 million in farm payments going to residents of the District of Columbia, $4.2 million going to people in Manhattan, and $1 million of taxpayer money going to Beverly Hills 90210.

Now, what can we do to change this? The first thing we are doing is we are getting rid of the three-entity rule, which cuts down on abuse and allows these payments to go to the people they should go to, and ending the practice of dividing farms into multiple